

RECEIVED

NOV 07 2016

SPECIAL EDUCATION
SERVICES

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

STUDENT¹,

Student,

Case No: 2015-0410

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

 SD,

School District.

FINAL DETERMINATION AND ORDER

JURISDICTION

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C §1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

BACKGROUND

The Student is a 9-year-old, male who would be in third grade.² He qualifies for special education services under the disability category of other health impairment (OHI), due to Attention Deficit Hyperactivity Disorder – combined type (ADHD) and Sensory Modulation Disorder – mixed type, pursuant to eligibility and IEP meetings on April 29, 2013, April 1, 2014, May 12, 2015, and March 14, 2016. The Student was found to have educational needs in the areas of: math – numbers and counting, size and shape comparisons; phonemic awareness;

¹ Personal identification information is provided in Appendix A.

² Parent removed the child from the District on November 21, 2014. The Student has not attended school since that time. Homebound services commenced on January 6, 2015.

significant sensory regulation difficulties; fine motor difficulties; speech language – articulation of the “l” sound; and social/emotional difficulties. Parent disagreed with the Student’s educational placement; District evaluations; the IEP Team’s consideration of the evaluations of outside providers; the Student’s IEP goals in the areas of math, language arts and speech; staff training; ESY and transportation services; development of the Student’s Behavioral Intervention Plan (BIP); IEP Team member attendance at various IEP meetings; and provision of occupational therapy, social work, and speech language services to the Student.

The Parent filed the Due Process Complaint Notice (DPCN) on June 7, 2016. (IHO Exhibit #1.) On June 15, 2015, the District filed a Motion to Dismiss and Motion for Sufficiency. (IHO Exhibit #5.) This Hearing Officer found Parent’s DPCN to be insufficient and allowed Parent ten (10) calendar days, to June 19, 2015, to amend her DPCN. (IHO Exhibit #7.) Parent timely filed an Amended DPCN on June 27, 2016. (IHO Exhibit #11.) In the Amended DPCN, Parent raised twelve (12) issues. (IHO Exhibit #11.) This Hearing Officer determined that further information was required regarding issues numbered 3, 4, 8, and 11 to establish their sufficiency. Specifically, Parent was to provide information relating to the specific ways in which various IEPs were insufficient and allegedly not implemented by District staff members. Additionally, Parent was to provide specifics related to the alleged procedural violations – which required participants were not present at which IEP meetings and which alleged changes occurred to which IEPs without required IEP meetings. Parent was provided an opportunity to provide this additional information by July 8th. (IHO Exhibit #13.) Parent’s additional information was timely filed but was not provided as this Hearing Officer had ordered. (IHO Exhibit #14.) Therefore, Parent was given four (4) additional days in which to comply with the Hearing Officer’s request. Parent timely provided the additional information. (IHO

Exhibit #17.) The District was granted until July 18th to file its Response to Parent's Amended DPCN. The District Response was timely filed on that date. (IHO Exhibit #18.)

At the time its Motion for Insufficiency was filed, the District also filed a Motion to Dismiss Paragraphs 1-18 and 27 of Parent's original DPCN. (IHO Exhibit # 5.) The District's Motion to Dismiss was based upon its assertions that the complaint contained allegations against non-parties and further contained allegations that are not reviewable through a Due Process Complaint. Parent was provided an opportunity to respond to District's Motion to Dismiss by no later than 5:00 p.m. on July 11th. Parent's Response was timely filed on July 10th. (IHO Exhibit #15.) The District's Motion to Dismiss was granted as it related to Paragraphs 1-18 and 27 of Parent's original Due Process Complaint Notice filed June 7, 2016. (IHO Exhibit #19.)

The Parties agreed that the Amended DPCN would be accepted as of the date of Parent's filing of the supplemental information requested by this Hearing Officer, July 12, 2016. The District did not object to this Hearing Officer's acceptance of the Amended Due Process Complaint Notice. Therefore, the due process timeline was reset and commenced on July 12, 2016. The 45-Day deadline for this Hearing Officer to render a decision was reset to September 26, 2016. (IHO Exhibit #19.)

The parties subsequently participated in several resolution sessions on August 3rd and 15th but were unable to resolve any of the outstanding issues. On August 17, 2016, the parties agreed upon the prehearing conference date and due process hearing dates of October 6-7 and 25-26. The District requested a continuance in order to accommodate the parties schedules and the agreed upon hearing dates. Parent agreed to the prehearing conference and due process hearing dates and initially agreed to the continuance. However, at a later time during the call, Parent indicated that she objected to the continuance. This Hearing Officer granted the District's

Motion for Continuance for good cause shown and the 45-Day deadline was extended to November 5, 2016. (IHO Exhibit #22.)

The Parent opted for a closed hearing. The Due Process Hearing was held on October 6 and 25, 2016. Mr. [REDACTED] and Mr. [REDACTED] of [REDACTED] represented the District. Mr. [REDACTED], Director of Pupil Personnel Services was the District Representative. The Parent was unrepresented by counsel. The District presented the following Exhibits which were admitted into evidence: SD 15-17, 45, 47, 48, 52, 53, 55A, 55C, 59, 62D, 92, 97, 134, 135, 135A, 147, 147B, 147D, 147E, 147H, 153, 166, 167, 173, 175 - 182, 190, transcript of the second day of the February 19, 2016 hearing.³ From the Parent's due process hearing held February 18 & 19, 2016, the District requested to admit Parent's Exhibits page numbered 300-458, 649, 651-654, 730-736. Those documents were admitted into evidence as part of the administrative record at that hearing, and were admitted into evidence at this due process proceeding. The Parent did not provide any 5-Business Day Disclosures and did not present any Exhibits at hearing.⁴ (IHO Exhibits #41-42.) The Hearing Officer's Exhibits were: IHO Exhibits # 1-50. Both parties submitted oral closing statements. District counsel submitted the case law relied upon by the District.

ISSUES

³ This matter was previously assigned to this Hearing Officer on or about April 28, 2015. After four (4) days of Prehearing Conference and multiple document submissions by Parent and Parent's former counsel, the issues were certified for due process hearing. The Due Process Hearing was held on February 18 & 19, 2016 and ended after Parent's withdrawal at the beginning of the second day of testimony. Subsequently, Parent refiled her Due Process Hearing Request on June 7, 2016. After this Hearing Officer's review of the Amended DPCN and supplemental submissions in this matter and comparison to the issues identified during the prior due process proceeding, this Hearing Officer found the issues raised to be virtually identical with only several identified date changes. The Student has not been enrolled in the District since November 21, 2014.

⁴ This Hearing Officer finds it noteworthy that, after multiple discussions of potential witnesses, their testimony, subpoenas to be issued, allocation of time for witness testimony, Parent declined to present any witness testimony to support her contentions. This Hearing Officer repeatedly discussed, with both parties present, the testimony of their respective witnesses. Both parties were encouraged to contact their proposed witnesses well in advance of the due process hearing dates to secure the availability and attendance of said witnesses at hearing.

Based upon the case history of this matter, the Parent's Amended DPCN filed June 27th and supplemented on July 12th, the issues raised by the Parent, including the relief requested, and the response of the District, the following issues, defenses and requested relief are presented for determination by this Hearing Officer:

(a) Whether the self-contained special education classrooms at [REDACTED] Elementary were the least restrictive environment in which to implement the IEPs dated from March 19, 2014 – December 16, 2014 and in which to provide the Student with FAPE.

(b) Whether homebound services were the least restrictive environment in which to provide the Student with FAPE from January 6, 2015 to August 20, 2015.

The Parent requests that this Hearing Officer determine that a general education classroom/resource classroom, with appropriate services, supports and accommodations, at [REDACTED] Elementary in [REDACTED] School District [REDACTED] or a similarly situated school, is the least restrictive environment in which to implement the IEPs dated from March 19, 2014 through December 16, 2014 and provide the Student with FAPE.

The District maintains that at all times in question the self-contained classroom at Empire Elementary was the least restrictive environment in which to provide the Student with FAPE.

(c) Whether the District as of December 16, 2014 evaluated the Student in all areas of suspected disability, specifically speech language pathology, occupational therapy, central auditory processing, assistive technology, and current grade level performance, pursuant to 34 CFR §300.304(c)(4).

The District maintains that at all times in question it properly evaluated the Student in all areas of suspected disability including specifically speech language pathology, occupational therapy, central auditory processing, assistive technology and current grade level performance.

The Parent requests that this Hearing Officer Order the District to evaluate the Student in the areas of speech language pathology, occupational therapy, auditory processing, assistive technology and current grade level performance; set appropriate IEP goals designed to assist the Student in making educational progress in those areas where needed; provide compensatory education as appropriate to compensate the Student for missed services in identified areas.

(d) Did the District violate 34 C.F.R. 300.502(c)(1) by failing to consider the evaluation of:

(1) Dr. [REDACTED] in formulating the March 19, 2014 – August 20, 2015 IEPs.

- (2) ██████████ in formulating the March 19, 2014 – August 20, 2015 IEPs.
- (3) ██████████, outside occupational therapist, in formulating the October 8, 2014 – August 20, 2015 IEPs.
- (4) ██████████, outside reading and math academic evaluations, in formulating the October 8, 2014 – August 20, 2015 IEPs.
- (5) Dr. ██████████, outside psychiatric evaluations, in formulating the August 20, 2015 IEP.
- (6) ██████████, District social work evaluation, in formulating the April 30, 2015 - August 20, 2015 IEPs.

The District maintains that it considered the outside psychological evaluation of Dr. ██████████ in formulating the March 19, 2014 – August 20, 2015 IEPs; considered the outside behavioral evaluation by ██████████ in formulating the March 19, 2014 – August 20, 2015 IEPs; considered the outside occupational therapy evaluation of ██████████ in formulating the October 8, 2014 – August 20, 2015 IEPs; considered the Parent's outside reading and math academic evaluations of ██████████ in formulating the October 8, 2014 – August 20, 2015 IEPs; considered the Parent's outside psychiatric evaluations of Dr. ██████████ in formulating the August 20, 2015 IEP; considered the social work evaluations of District social worker ██████████ in formulating the April 30, 2015 - August 20, 2015 IEPs.

The Parent requests that this Hearing Officer Order the District to convene an IEP meeting to consider the psychological evaluation of Dr. ██████████, to address his findings, and to implement his recommendations.

The Parent requests that this Hearing Officer Order the District to convene an IEP meeting to consider the behavioral evaluation of ██████████, to address her findings, and to implement her recommendations.

The Parent requests that this Hearing Officer Order the District to convene an IEP meeting to consider the occupational therapy evaluation of ██████████, to address her findings, and to implement her recommendations.

The Parent requests that this Hearing Officer Order the District to convene an IEP meeting to consider the reading and math academic evaluations of ██████████, to address her findings, and to implement her recommendations.

The Parent requests that this Hearing Officer Order the District to convene an IEP meeting to consider the psychiatric evaluation of ██████████, to address his findings, and to implement his recommendations.

The Parent requests that this Hearing Officer Order the District to convene an IEP meeting to consider the social work evaluation of District social worker [REDACTED], to address her findings, and to implement her recommendations.

(e) Whether the IEPs dated from March 19, 2014 to August 20, 2015 provided goals designed to enable the Student to make educational progress in the areas of counting and number identification, size comparisons, shape recognition as required by 34 CFR §300.320(a)(2).

(f) Whether the IEPs dated from March 19, 2014 to August 20, 2015 provided measurable goals designed to assist the Student in making educational progress relating to language and vocabulary improvement, despite the Student being found eligible for speech language services as required by 34 CFR §300.320(a)(2).

(g) Whether the IEPs dated from March 19, 2014 to August 20, 2015 provided measurable goals designed to assist the Student in making educational progress relating to articulation as required by 34 CFR §300.320(a)(2).

The Parent requests that this Hearing Officer determine that the IEPs dated March 19, 2014 to August 20, 2015 failed to provide necessary goals in the above areas and therefore, the Student was unable to make educational progress in those areas thus denying the Student FAPE. The District maintains that the IEPs dated from March 19, 2014 to August 20, 2015 provided necessary goals in all areas and were designed to assist the Student in making educational progress and thus, the Student is receiving FAPE.

The Parent requests that this Hearing Officer award compensatory education in the form of individual social work therapy, speech language therapy, tutoring in math and reading one hour per week for one calendar year.

(h) Whether the Student was denied FAPE when allegedly:

(1) faculty and staff working with and implementing the Student's IEP were not trained in the CPI and ALERT methods as required by the IEPs dated from March 19, 2014 to August 20, 2015.

The Parent requests that this Hearing Officer determine that the District failed to provide the required CPI and ALERT training to staff working with the Student as required by the IEPs dated from March 19, 2014 to August 20, 2015. The District maintains that, at all times, faculty and staff working with the Student received the required training.

The Parent requests that this Hearing Officer Order the District to provide training in the CPI and ALERT methods of child restraint for any and all staff members who work directly with the Student.

- (2) the Student was not provided with the required 45 mpw of Occupational Therapy services as provided in the March 19, 2014 to August 20, 2015 IEPs and pursuant to 34 CFR §300.323.
- (3) the Student was not provided with the required 30 mpw of Social Work services as provided in the March 19, 2014 to August 20, 2015 IEPs and pursuant to 34 CFR §300.323.
- (4) the Student was not provided with the required 40 mpw of Speech Language therapy as provided in the March 19, 2014 to August 20, 2015 IEPs and pursuant to 34 CFR §300.323.

The Parent requests that this Hearing Officer determine that the Student was denied FAPE when he was not provided with the required occupational therapy, social work, and speech language therapy contrary to the terms of the March 19, 2014 to August 20, 2015 IEPs. The District maintains that at all times in question, the Student was provided with the required minutes in the areas of occupational therapy, social work, and speech language therapy and was thus provided FAPE.

The Parent request that this Hearing Officer award compensatory education in the form of occupational therapy, individual social work therapy and speech language therapy once per week for two years (24 months).

- (5) transportation services to occupational therapy sessions were denied contrary to the terms of the March 19, 2014 – August 20, 2015 IEPs.

The Parent requests that this Hearing Officer determine that the Student was denied FAPE when the District did not provide transportation to outside occupational therapy services. The District maintains that at all times in question, the Student was provided with FAPE and with transportation services as required under IDEA.

The Parent requests that this Hearing Officer award reimbursement for transportation to occupational therapy services provided by Parent for the period March 19, 2014 to August 20, 2015.

- (6) transportation services were not provided to and from school as required by March 19, 2014 – August 20, 2015 IEPs.

The Parent requests that this Hearing Officer determine that the Student was denied FAPE when the District did not provide transportation to and from school. The District maintains that at all times in question, the Student was provided with FAPE and with transportation services as required under IDEA.

The Parent requests that this Hearing Officer award reimbursement for transportation to and from school provided by Parent for the period March 19, 2014 – August 20, 2015.

- (7) ESY services during the Summers of 2014, 2015, and 2016 were not provided as required in the IEP dated March 19, 2014.

The Parent requests that is Hearing Officer determine that the Student was denied ESY services in Summer 2014, Summer 2015, and Summer 2016 as provided for in the March 19, 2014 IEP. The District maintains that at all times in question, the Student was provided with ESY services as required in the March 19, 2014 IEP.

The Parent requests that this Hearing Officer award compensatory education in the form of _____ tutoring in the areas of _____, _____ times per week, for _____.

- (8) Student's antecedent behaviors were not considered and the results measured, as required by the FBAs and BIPs dated between April 1, 2014 and April 30, 2015.

The Parent requests that this Hearing Officer determine that the Student was denied FAPE when the FBAs and BIPs dated between April 1, 2014 and April 30, 2015 failed to consider and track antecedent behaviors, were not implemented, and results were not measured. The District maintains that at all times in question, the Student was provided with FAPE and with FBAs and BIPs that considered and tracked antecedent behaviors, were implemented by the District, and results were measured.

The Parent requests that this Hearing Officer order the District to engage an outside Board Certified Behavioral Analyst to develop an FBA and BIP that appropriately considers and tracks antecedent behaviors, is implemented, and results of which can be measured.

- (i) Whether the Student's December 16, 2014 IEP was inappropriate because it did not provide (1) a phonemic awareness goal and (2) social work goals.

The Parent requests that this Hearing Officer determine that the Student's present levels of performance in reading and social interactions were not considered when the December 16, 2014 IEP was developed. The District maintains that at all times in question, the Student's present levels of performance in reading and social interaction were considered when the IEPs dated December 16, 2014 were developed.

The Parent requests that this Hearing Officer award compensatory education in the form of tutoring in reading and individual social work therapy for a period of one hour per week for two years (24 months).

- (j) Whether the Student was denied FAPE when allegedly:

⁵ Parent did not provide this information although it was requested by this Hearing Officer on multiple occasions.

- (1) required IEP team members were not present at the IEP meetings convened on March 19, 2014 – March 14, 2016, specifically the school psychologist, school social worker, school occupational therapist, school nurse, Director of Transportation, thus violating Parent's procedural rights as required by 34 CFR §300.321.

The Parent requests that this Hearing Officer determine that required members of the IEP team, specifically the school nurse and Director of Transportation, were not present at the March 19, 2014 – March 14, 2016 IEP meetings thus denying the Parent's procedural due process rights. The District maintains that at all times in question, required member of the IEP team were present and that Parent's procedural due process rights were not violated.

The Parent requests that this Hearing Officer order the District to convene an IEP meeting with the required IEP team members present, specifically the school psychologist, school social worker, school occupational therapist, school nurse, and Director of Transportation.

FINDINGS OF FACT

This Hearing Officer did have the benefit of a transcript with respect to the testimony heard on February 18 & 19, 2016 and October 6, 2016 but did not have a transcript for the October 25, 2016 testimony when writing this decision. Therefore, the following is based upon the February 18 & 19, 2016 and October 6, 2016 transcripts, this Hearing Officer's personal notes, recording of the hearing, and documentary evidence. This Hearing Officer carefully considered the testimony of all witnesses presented and all documents admitted into evidence whether or not specifically referred to or cited when making her final determination. After considering all the evidence, as well as the arguments of both District counsel and the Parent, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a 9-year old male who would be in third grade. He qualifies for special education services under the disability category of other health impairment (OHI), due to Attention Deficit Hyperactivity Disorder – combined type (ADHD) and Sensory Modulation Disorder – mixed type. The Student has not been enrolled in a District school since November 21, 2014, as Parent removed him from school on that date. (Tr. 439; SD 147E.)

2. The Student has received special education services and supports throughout his educational career. (SD 17.)

3. Pursuant to eligibility and IEP meetings on April 29, 2013, April 1, 2014, May 12, 2015, and March 14, 2016. The Student was found to have educational needs in the areas of: math – numbers and counting, size and shape comparisons; phonemic awareness; significant sensory regulation difficulties; fine motor difficulties; speech language – articulation of the “l” sound; and social/emotional difficulties. (SD 17, 48, 59, 62D, 92,147E.)

4. The Student was placed in the resource room for the 2012-2013 school year at DS2. (Tr. 291.) During that period, the Student exhibited aggressive behaviors on an almost daily basis. On May 10, 2013, the Student was observed to have hit five times, spit three times, had one boundary issue, pinched twice, bit twice, and scratched once. On May 13, 2013, the Student hit seven times, kicked three times, spit twelve times, exceeded his boundary four times. (Tr. 182-187; Parent pages 300-319.)

5. The Student was placed in the resource room at DS2 for his kindergarten school year commencing in the fall of 2013. (Tr. 391; SD 17.) This was the Student’s second year of kindergarten. (Tr. 396.)

6. The resource room was a smaller classroom with a teacher table, student desks and chairs. The Student was provided with a full-time paraprofessional aide. (Tr. 392-393.) Initially, his school day was two hours long and gradually increased to four hours. (Tr. 394.)

7. During fall 2013, the Student exhibited many aggressive behaviors on almost a daily basis. He would run at SE1⁶ or his paraprofessional aide. He would kick, push, hit, bite, spit at, and throw things at SE1. These behaviors would occur two to three times per week at a

⁶ SE1 has been a special education teacher for fourteen years. She has a Bachelor of Science degree in education from Iowa State University with an endorsement in special education. She has been employed as a special education teacher with the District for ten years.

minimum. The Student would throw objects around the classroom and would attempt to leave the classroom and run down the hallway through the school. (Tr. 394-396, 521-522; SD 166.)

SE1 tracked the Student's behaviors. (SD 166.)

8. SE1 had to restrain the Student. Sometimes she had to restrain him once per day, other times she had to restrain him multiple times. She was CPI trained at that time and had training in the use of restraints. (Tr. 396-397.) SE1 did not have Alert Program training. (Tr. 418.)

9. While in SE1's resource room, the Student would participate in general education once or twice per week for the morning routine, which included carpet time and calendar time. He went to the general education classroom with SE1 and his paraprofessional aide. When he was in the general education classroom, sometimes the Student was engaged, other times he was very disengaged. He did not want to participate and would not want to switch activities. If he was not able to go to the next activity with the general education students, he would become very angry and violent toward SE1 and the paraprofessional aide. When he became violent, he would be removed from the general education classroom. The general education students reacted to the Student's violent behavior with surprise and fear. (Tr. 409-412.)

10. DD⁷, the District Diagnostician, met with SE1 and the Student on several occasions. DD worked with SE1 to give her different strategies to assist with the Student's emotional outbursts and difficult behaviors. Those strategies included providing the Student with choices, giving frequent breaks, making tasks more like a game situation rather than a worksheet, providing picture schedules, labeling things around the classroom, using social stories. (Tr. 569-570.)

11. While DD was assisting SE1 in the classroom, the Student exhibited aggressive behaviors including kicking, screaming, and hitting. (Tr. 568-571.)

⁷ DD hold a Bachelor's Degree in elementary education with a minor in early childhood. She is also a certified special education teacher. She has worked for the District for twenty (20) years.

12. DD did not restrain the Student. On the day she was in SE1's classroom, she assisted SE1 in trying to calm the Student by placing her hand across the Student's leg, below the knee for just a few seconds. This calmed the Student and prevented him from continuing to kick SE1. (Tr. 588.)

13. The March 19, 2014 through March 14, 2016 IEPs all provided that only staff who have had the CPI restraint training will use those techniques to restrain the Student. (Tr. 263-269, 291-293; SD 59, 147B, 147D.)

14. SE1 (Tr. 396-397), SE2⁸ (Tr. 445), SLP (Tr. 501), SW (Tr. 529), and DD (Tr. 590) were all CPI trained.

15. This Hearing Officer finds, based upon the evidence presented, that only SE1 restrained the Student and she was CPI trained at the time as required by the Student's IEPs.

16. The March 19, 2014 IEP provided that Alert Program training had been provided to the special education teacher, speech language pathologist, school social worker, general education teacher, and paraprofessionals working with the Student. (SD 59; Testimony of KS.)

17. This Hearing Officer finds that, based upon the credible testimony of KS, Alert Program training was provided to the above school personnel as required by the March 19, 2014 IEP.

18. Due to the Student's aggressive behaviors, the Student was placed in the SELF⁹ program beginning in January 2014. (SD 48.) The Student continued in SE2's SELF program classroom until the Parent removed him from school on November 21, 2014. (Tr. 439-440.) The SELF program is a self-contained special education classroom. (Tr. 440-442.)

19. Initially, in the SELF program classroom, the Student continued to exhibit verbally and physically aggressive behaviors toward staff including kicking, hitting, spitting, and biting.

⁸ SE2 was a special education teacher in the District for 21 years. She is now retired.

⁹ SELF stands for Social-Emotional Learning Focused classroom.

These behaviors occurred on a daily basis. (Tr. 442-444.) The Student was unable to stay on task for long periods of time, his behavior was disruptive to other students in the classroom, and he required more frequent reminders than other students to stay on task. (Tr. 445-447.) Over time, the Student's behaviors improved because there were four adults permanently assigned to the classroom and as staff got to know the Student, they were better able to identify antecedent behaviors. (Tr. 444-445.) SE2 and her classroom staff were Alert program trained and had also been provided with sensory tools by OT3. (Tr. 445-446.) While the Student was making progress in the SELF program, his continued progress was impacted by his "sketchy" attendance. (Tr. 448.) During the period August – November 2014, the Student attended only sixteen (16) days of school. (Tr. 448-449.)

20. The Student attended GE¹⁰'s general education classroom for August 2014 to November 2014, when he was a student in the self-contained SELF program classroom. He attended her classroom between five to ten times. The Student would come to her classroom for math. He was unable to be engaged in the classroom activity for very long. He would generally stay for five to ten minutes, would work for a bit, would get up and walk around the classroom, and would then ask to leave the classroom. (Tr. 557-561.)

21. In the opinions of SE1, SE2, SW¹¹, GE, the SELF program, self-contained special education classroom was the appropriate educational placement for the Student during the time period at issue. The Student required intensive support for academics and behaviors at that time. The general education classroom and resource room were unable to provide the Student with the

¹⁰ GE is a first grade general education teacher. She has been employed by the school district for thirteen years. She has an undergraduate degree from Martin Luther College and a Master's Degree from National-Louis University in curriculum and instruction.

¹¹ SW is a school social worker employed by the District. She has been employed by the District for 28 years. She holds a Bachelor's Degree from University of Wisconsin and a Master's Degree in social work from the University of Illinois in Champaign-Urbana.

appropriate level support to address his educational needs. (Tr. 412-416, 464-465, 522-524, 5650-561.)

22. This Hearing Officer finds the testimony of SE1, SE2, SW, GE, and KS to be credible and persuasive. It is further found that the SELF program classroom placement was the appropriate educational placement for the Student during the time period at issue, as it provided the Student with the appropriate level of academic and behavioral supports to address his unique educational needs. Parent presented no evidence to contradict the testimony of the District personnel.

23. Beginning in December 2014, Parent provided the District with a series of certifications from the Student's treating psychiatrist for homebound instruction. (Tr. 86-90, 139-143, 317-319; SD 135.) These certifications were solicited by Parent and provided by her to the School District. (Testimony of KS.)

24. The record is devoid of any evidence to support an assertion that the School District recommended homebound instruction as an appropriate educational placement for the Student.

25. This Hearing Officer finds that the homebound instruction placement was solicited by the Parent and requested by the Student's treating psychiatrist. The District provided homebound instruction despite its reservations concerning the appropriateness of that educational placement for this Student based upon his unique educational needs.

26. The Student was evaluated in the area of speech language pathology on February 27, 2014. The Student was referred for evaluation for his receptive and expressive vocabulary skills.

27. SLP¹² administered the Kindergarten Learning Screening Test (KLST-2), the Receptive One Word Picture Vocabulary Test (ROWPVT), and the Expressive One Word Picture Vocabulary Test (EOWPVT). The Student received a percentile ranking of 17 on the KLST as he demonstrated errors on the /l/ sound. (Tr. 484-485.) This was a typical error for a student of a similar age to this Student. On the ROWPVT, the Student received a standard score of 92, which is within the average range. (Tr. 485.) On the EOWPVT, the Student received a standard score of 101, which is within the average range. (Tr. 486.) SLP recommended speech services to address the Student's articulation error with respect to the /l/ sound. (Tr. 486.)

28. The Parent also procured a private speech language evaluation on October 23, 2014, which was updated by the provider on December 11, 2014. (SD 97, 147.) SLP reviewed that report. The private speech language pathologist administered the Peabody Picture Vocabulary Test (PPVT). The Student received a standard score of 98, which is within the average range. (Tr. 488.) The private speech language pathologist also administered the Expressive Vocabulary Test (EVT) on which the Student received a standard score of 86, which is within the average range. (Tr. 488-489.) Also completed was the Clinical Evaluation of Language Fundamentals (CELF-4). The Student's performance on recall of sentences was within normal limits. (Tr. 489-490.) The Student's sentence and word structure was in the low average range. The Student's score on the subtest for completed concepts and following directions was measured to be below average. (Tr. 490-491.) The private speech language pathologist reported that, in her opinion, the Student's needs could be addressed in a single visit and her report stated, "therapy not indicated." (Tr. 491-492; SD 147.)

¹² SLP has worked for the District for six years. She holds a Master's Degree in communication sciences and disorders from Illinois State University. She is a licensed as an SLP by the Illinois Department of Professional Regulation.

29. As a result of SLP's evaluation, at the March 19, 2014 IEP meeting, a speech language goal was formulated for the Student. The goal states that "by March 2015, the Student will produce the /l/ sound in all positions of words at the conversational level with 80% accuracy." (Tr. 191-192, 197, 495-500; SD 59.) The speech language goal remained part of the Student's IEPs on October 8, 2014 (SD 92), December 16, 2014 (SD 134), April 30, 2015 (SD 147), August 20, 2015 (SD 147B), March 14, 2016 (SD 147E).

30. SLP was CPI and Alert Program trained. (Tr. 501.) SLP never restrained the Student. (Tr. 501.)

31. The Student's IEPs called for forty (40) minutes per week of speech language services, which was later reduced to thirty (30) minutes per week because the Student was making good progress toward his goal. (Tr. 501-502.) The Student's lack of attendance at school inhibited SLPs ability to provide speech language services. She was able to provide the required related service minutes when the Student was in school. (Tr. 501-502.) SLP attempted to provide services to the Student when he was on homebound instruction, however, she was not always able to do so as the Parent would cancel the scheduled sessions. (Tr. 503.)

32. SLP attended an IEP meeting held March 14, 2016. SLP was to perform an assessment of the Student's speech language skills pursuant to the domain sheet. (Tr. 504-506; SD 147E.) It was difficult to coordinate her evaluation with Parent but she was able to conduct her evaluation shortly before the end of the school year. (Tr. 507-509.)

33. Parent never disagreed with the SLP's evaluations of the Student. (TR. 512-513.)

34. This Hearing Officer finds the testimony of SLP to be credible and persuasive. The area of speech language pathology was as area of suspected disability for this Student. It is further

found that the District evaluated this Student in this area on several occasions and provided services to the Student related to the identified need of an articulation error with the /l/ sound.

35. This Hearing Officer finds that a speech language goal relating to this Student's articulation error with the /l/ sound was created in the October 8, 2014 IEP and was continued in the December 16, 2014, April 30, 2015, August 20, 2015, and March 14, 2016 IEPs.

36. The Hearing Officer finds that SLP provided the Student with speech language service minutes as required by the March 19, 2014 through August 20, 2015 IEPs when the Student attended school or was made available by Parent.

37. OT3¹³ performed the Student's initial occupational therapy evaluation when he entered preschool in the District. She worked with the Student during his initial kindergarten school year and the following year when he repeated kindergarten at DS2, through March 2014. (Testimony of OT3.)

38. As part of her evaluation, OT3 performed classroom observations and hands on interaction working with the Student for a total of five (5) hours. She also had ongoing conversations with SE1. (Testimony of OT3, SD 17.)

39. OT3 found the Student eligible for school based occupational therapy in order to help the IEP team set up sensory strategies. OT3 opined that the Student needed more than sensory strategies. He also needed a more behavioral-based approach to assist the Student in reaching his full potential. (Testimony of OT3, SD 17.)

40. OT3 also performed a functional behavior assessment which was a comprehensive assessment regarding how the Student performed and related to sensory strategies during his

¹³ OT3 is an employee of the [REDACTED] which provides occupational therapy services to District students. She has been working as an occupational therapist with children since 1986. She is trained and certified in SIPT – Sensory Integration and Praxis Test. She is a licensed occupation therapist with the State of Illinois.

school day. (SD 52.) In her work with the Student, OT3 found that the Student worked well with her but he never wanted sensory strategies. During the 2013-2014 school year, the Student was physically aggressive, was kicking glass plates, and would kick other staff members. Many staff members wore shin pads because the Student kicked them so frequently. OT3 noted that if the Student was unable to do what he wanted, that triggered a very negative response from him. Many times, it was just distraction, not sensory strategies that calmed the Student down. (Testimony of OT3.)

41. OT3 updated her evaluation of the Student in March 2014 at Parent's request. (SD 55-55C.)

42. OT3 provided formal Alert Program training to the staff working with the Student during the 2013-2014 school year. (Testimony of OT3, SE1.)

43. OT3 worked with the Student through March 2014. The Student's attendance was sketchy at that time and he was absent for ten (10) of the twenty-four (24) sessions that could have been provided. (Testimony of OT3.)

44. OT1¹⁴ was assigned to provide the Student with occupational therapy services during the summer of 2015. She was also assigned to conduct an evaluation of the Student during the summer of 2016. (Tr. 593.) During Summer 2015, OT1 made several attempts to contact Parent. The Parent scheduled two occupational therapy sessions for the Student. Neither the Parent nor the Student appeared for the occupational therapy sessions scheduled for July 1, 2015 and July 8, 2015 and Parent did not call to cancel those sessions. On July 14, 2015, OT1 spoke to Parent. At that time, Parent indicated that she would wait on services for now as a due process proceeding was pending. (Tr. 593-597.)

¹⁴ OT1 holds a Bachelor's Degree from the University of Illinois at Chicago in kinesiology and a Master's Degree in occupational therapy from University of Illinois at Chicago. She is an occupational therapist licensed by the Illinois Department of Professional Regulation. (Tr. 592-593.)

45. At the August 20, 2015 IEP meeting, Parent acknowledged that OT1 had been diligent in attempting to schedule services. (Tr. 597-598.)

46. OT1 was assigned to conduct the Student's occupational therapy evaluation in June 2016, as OT2 had not been successful in reaching Parent to schedule the evaluation of the Student during the school year. (Tr. 600-601; Testimony of OT2.) Parent had signed consent for the occupational therapy evaluation at the March 14, 2016 IEP meeting. (Testimony of OT2; SD 147E.) On May 31, 2016, OT1 sent Parent an email regarding scheduling the Student's occupational therapy evaluation. She did not receive a response from Parent. (Tr. 601-602.)

47. At the March 14, 2016 IEP meeting, the IEP team had agreed to conduct an occupational therapy evaluation of the Student to assess fine motor and sensory regulation. (Testimony of OT2; SD 147E.) The Student did not attend school after that meeting. OT2 contacted Parent several times in order to schedule the evaluation. She did not receive a response from Parent. (Testimony of OT2.) OT2 opined that an evaluation of the Student would have been difficult, as he was not in the school setting at that time and the purpose of her evaluation was to observe and assess his abilities in the school setting. OT2 was unable to complete her evaluation prior to Summer 2016. (Testimony of OT2; Tr. 600-601.)

48. Parent engaged the services of a private occupational therapist. The private occupational therapist found the Student's fine motor abilities to be age appropriate. She provided recommendations for the Student. (SD 147.) Some of these recommendations were implemented and incorporated into the Student's October 8, 2014 IEP and those IEPs which were formulated after that date. (Tr. 151-166.)

49. This Hearing Officer finds that the area of occupational therapy was an area of suspected disability for this Student. It is further found that the District evaluated this Student in that area

in April 2013 and March 2014. Further the District attempted to evaluate the Student for occupational therapy services after the March 14, 2016 IEP meeting. However, it was unable to complete the evaluation as the Parent refused to schedule and make the Student available for said evaluation.

50. The record is devoid of any evidence to support an assertion that occupational therapy minutes were not provided as required by the March 19, 2014 through August 20, 2015 IEPs.

51. This Hearing Officer finds that the Student was provided with the occupational therapy minutes as required by the March 19, 2014 through August 20, 2015 IEPs when the Student attended school.

52. The Student was evaluated by the school psychologist on April 24, 2013. The school psychologist observed the Student in the classroom on three separate occasions between April 15 – April 23, 2013. She attempted two additional classroom observations. The school psychologist observed and documented the Student's aggressive, noncompliant, impulsive behavior and provided recommendations for Student instruction. (SD 15.)

53. The Hearing Officer finds that the IEPs dated October 8, 2014 (SD 92), December 16, 2014 (SD 134), April 30, 2015 (SD 147), August 20, 2015 (SD 147B), March 14, 2016 (SD 147E; Tr. 453-460) contain information regarding the Student's current grade level performance.

54. On May 12, 2014 after an IEP conducted to determine whether additional evaluations needed to be conducted, Parent specifically agreed in writing that no further evaluations were necessary. (Tr. 288-289, 460-461; SD 62D.)

55. This Hearing Officer finds that after the May 12, 2014 IEP meeting, Parent agreed in writing that no further evaluations were necessary.

56. Parent engaged private therapists: a private psychologist, private behavioral therapist, and private occupational therapist. (Tr. 143-165.)

57. The record is devoid of any evidence to suggest that any of the IEP team members, including Parent, or any of Parent's private therapists expressed or identified any concerns with the Student's central auditory processing and only Parent questioned the need for an assistive technology evaluation. (Tr. 326-328.)

58. This Hearing Officer finds that central auditory processing and assistive technology were not areas of suspected disability for this Student.

59. SW¹⁵ worked with the Student while he attended DS2. She was CPI trained and participated in an Alert Program webinar. (Tr. 529.) During the 2013-2014 school year, SW observed the Student in a very agitated state, running around the classroom, not following directions, yelling, tearing up the classroom. In her opinion, he posed a danger to himself. (Tr. 519-522.)

60. SW evaluated the Student on February 25, 2014. (Tr. 527; SD 53.) She conducted a Vineland-2 Adaptive Behavior Scales (VABS-2) and provided a social history to Parent for completion. (Tr. 527.) SW recommended continued school social work services in order to increase the Student's peer interactions. (Tr. 527; SD 53.) When the Student was in the SELF program, self-contained special education classroom, he had an opportunity to go for lunch and recess with his general education peers. (Tr. 528.)

61. SW attended IEP meetings on February 27, 2014, April 30, 2015, August 20, 2015, and March 14, 2016. (Tr. 524-533.) SW's was an active participant at the Student's IEP meetings

¹⁵ SW is a school social worker for the District. She has been employed there as a school social worker for twenty-eight (28) years. She holds a Bachelor's Degree in social welfare from the University of Wisconsin and a Master's Degree in social work from the University of Illinois. She is licensed as a school social worker by the Illinois State Board of Education.

and the team considered her input during the IEP meetings, specifically the April 30, 2015 and August 20, 2015 meetings. (Tr. 528-529.)

62. SW provided the Student with the required 40 minutes per week of social work services, pursuant to his IEPs, when he was in attendance at school. (Tr. 531-532.)

63. Parent never disagreed with SW's evaluations and never complained about her services. (Tr. 537-538.)

64. This Hearing Officer finds the testimony of SW to be credible and persuasive. SW was an active participant in the IEP meetings referenced above and that her input was considered by the IEP team in formulating the Student's February 27, 2014 through March 14, 2016 IEPs. SW provided the Student with the required social work service minutes pursuant to the March 19, 2014 through August 20, 2015 IEPs.

65. Parent's private psychologist, Dr. G, came to DS2 and spoke to the IEP team on at least two occasions. (Tr. 526-527.) Parent, in her testimony, acknowledged Dr. G's numerous recommendations, which were incorporated into all of the Student's IEPs commencing in January 13, 2014. (Tr. 143-148; SD 47.) These recommendations included picture schedules, direct consultation with Parent, direct occupational therapy services, social work services, behavioral intervention plan, sensory tools and strategies, sensory breaks, Alert Program training and usage. (Tr. 143-148.) KS confirmed in her testimony that Dr. G's evaluations and recommendations were considered by the team and that Dr. G was present at several IEP meetings either in person or via telephone. (Tr. 324-325.)

66. Parent's private behavioral therapist, WM, prepared an evaluation and report dated November 11, 2013. (Tr. 149.) Parent provided this report to the IEP team (Tr. 149.) WM provided numerous recommendations, which were incorporated into the Student's IEPs

commencing January 13, 2014. (Tr. 149-150; SD 45). These recommendations include visual and auditory timers, not starting a new activity until the current activity is completed, additional time to complete assignments, provision of fidgets, sensory tools and strategies, behavior chart for task completion, and sensory breaks. (Tr. 148-151.) WM's evaluations and recommendations were considered by the IEP team. (Tr. 324-325.)

67. Parent's private occupational therapist, BJ, prepared an evaluation and report dated September 2, 2014 and April 10, 2015. (Tr. 151-152.) Parent provided these documents to the IEP Team. BJ provided numerous recommendations which were incorporated into the Student's IEPs commencing October 8, 2014, including therapy putty, picture schedule, timer, and therapeutic listening and headphones. (Tr. 151-165.) BJ's evaluations and recommendations were considered by the IEP team. (Tr. 324-325.)

68. No evidence was presented at hearing regarding any reports prepared by SLCT.

69. No evidence of a report prepared by Dr. I was presented at hearing.

70. This Hearing Officer finds the testimony of KS to be credible and persuasive. Dr. G, WM, and BJ all conducted evaluations and prepared reports that were considered by the Student's IEP team. The recommendations of all of these individuals were incorporated into the Student's IEPs commencing in 2014. Parent's own testimony corroborates the District's position and this Hearing Officer's finding.

71. This Hearing Officer finds that SLCT and Dr. I did not prepare evaluations and reports and did not attend any of the IEP meetings. Therefore, their recommendations could not have been considered by the IEP team.

72. The Student's IEPs dated from April 30, 2013 through August 20, 2015 contained math goals. (Tr. 198-202.) The April 30, 2013 IEP contained the following math goal: "By April 29,

2014, the Student will be able to recognize and sequence numbers from 1 to 100 with 100% accuracy.” (SD 17.) The January 13, 2014 IEP contained the following math goal: “By January 2015, the Student will complete addition facts to 5 with 100% accuracy.” (SD 48.) The March 19, 2014, October 8, 2014, December 16, 2014, April 30, 2015, August 20, 2015 IEPs contained the following math goal: “Given a grade level assessment, the Student will demonstrate an understanding of math number counting to 100 in and out of sequence with 100% accuracy. Benchmarks were provided for each of the above goals in order to measure the Student’s progress. (SD 59, 92, 134, 147, 147B.)

73. The Student’s October 8, 2014 and December 16, 2014 IEPs contained the following reading goal: “By October 2015, the Student will be able to identify 50 of the high frequency words 100% of the time.” Benchmarks were established in order to monitor the Student’s progress toward this goal. (SD 92, 134.) This is a phonemic awareness goal. (Tr. 461-464, 330-332.)

74. The Student’s December 16, 2014 IEP contained the following goal: “By December 2015, the Student will be able to communicate verbally his needs for coping 70% of the time.” (SD 134.) This is a social work goal designed to address the Student’s social-emotional and behavioral needs. This goal included benchmarks for the Student’s achievement of this goal. (SD 134; Tr. 532-533.) Parent conceded in her testimony that this IEP provided a social work goal. (Tr. 202-203.)

75. The Student’s IEPs dated from March 19, 2014 to August 20, 2015 did not contain language and vocabulary goals, other than an articulation goal. The Student’s expressive and receptive language skills were determined by SLP to be within the average range. The Student’s private speech pathologist did not recommend any therapy services. (Tr. 504, 511-513.)

76. The IEPs dated from April 29, 2013 through March 14, 2016 provide for special transportation services to and from school for the Student. (SD 17, 48, 59, 62D, 92, 147E.)

77. The record does not provide any evidence that these services were not provided on the dates that the Student attended school.

78. The IEPs dated from April 29, 2013 through March 14, 2016 do not provide for special transportation services to and from occupational therapy sessions. (SD 17, 48, 59, 62D, 92, 147E.)

79. This Hearing Officer finds that the IEPs at issue provided special transportation to the Student to and from school during the period from April 29, 2013 to March 14, 2016. It is further found that these services were provided to the Student on the dates he attended school, as no evidence was presented to the contrary. Further, it is found that the IEPs in question never provided for special transportation services to the Student to and from occupational therapy sessions. No evidence was presented at hearing to the contrary.

80. The District was prepared to provide extended school year (ESY) services to the Student during the summers of 2014 and 2015. (Tr. 332-333.) The Student's April 1, 2014 IEP provided for ESY services to commence on June 16, 2014. The Student's summer services were to consist of math, English language arts (ELA), behavior, and emotional strategies. Educational goals were set to be addressed. Parent refused those services because she was angry with the school district. (Tr. 165-167; SD 59.) The Student's April 30, 2015 IEP provided for ESY services to the Student during summer 2015. The services were to include speech, social work, ELA, and math. The duration of services was determined, and the goals to be addressed were articulated. (Tr. 173-174; SD 147.) Parent refused those services. (Tr. 172-173.) OT1 attempted to provide

occupational therapy services during summer 2015. However, Parent did not appear at the scheduled appointments and ultimately informed OT1 that she was declining services. (Tr. 601.)

81. This Hearing Officer finds the testimony of KS and OT1 to be credible, persuasive, and corroborated by Parent's own testimony. The Student's April 1, 2014 and April 30, 2015 IEPs provided the Student with ESY services. The District was ready, willing, and able to provide those services. However, Parent ultimately refused those services.

82. The District had not established the Student's eligibility for ESY services for summer 2016. The Student not been in attendance at a District school since November 20, 2014 and there was insufficient data for the District to make an ESY eligibility determination. (Testimony of KS.) An IEP meeting was held on March 14, 2016, at which time Parent signed consent for reevaluation of the Student. (SD 147E.) However, Parent refused to make the Student available to the evaluators. (Testimony of OT1, OT2, PSY, SW; SD 176-178, 181-182.)

83. This Hearing Officer finds the testimony of KS, OT1, OT2, PSY, and SW to be credible and persuasive. The District was unable to determine the Student's eligibility for summer 2016 ESY services because Parent refused to make the Student available for reevaluation by the District.

84. The Student's school attendance during the period August 20, 2013 through November 20, 2014 was inconsistent and sporadic. (Testimony of SE1, SE2, OT3, SLP, SW; SD 175.)

85. The Parent, a general education teacher, a special education teacher, an LEA representative, and an individual able to interpret the instructional implications of evaluation results were present at all of the IEP meetings held during the period at issue, with the exception of the December 16, 2014 IEP meeting. (SD 17, 48, 59, 62D, 92, 134, 147, 147B, 147E; Testimony of KS, SE1, SE2, GE, SLP, OT3, OT2, SW, DD.) The District concedes that a

special education teacher was not present at the December 16, 2014 IEP meeting. (Tr. 461.) At the end of the December 16, 2014 IEP team meeting, Parent produced a homebound services certification from Dr. I. The December 16, 2014 IEP was never implemented due to the homebound services certification. The IEP team reconvened after winter break on January 6, 2015 to create an IEP appropriate for homebound instruction. (Testimony of KS; SD 135, 135 A.)

86. This Hearing Officer finds the testimony of KS, SE1, SE2, GE, SLP, OT3, OT2, SW, and DD to be credible and persuasive. It is further found that the required IEP team personnel were present at all of the IEP meetings held during the period at issue, with the exception of the December 16, 2014 IEP meeting, at which a special education teacher was not present. This Hearing Officer finds that the December 16, 2014 IEP was not implemented, as the Student was placed on homebound instruction by his treating psychiatrist. An IEP meeting was held on January 6, 2015 and an IEP appropriate for homebound instruction was formulated.

87. A Functional Behavior Assessment (FBA) was completed for the Student and made part of the March 19, 2014 IEP, as was a Behavior Intervention Plan (BIP). (Tr. 454; SD 59.) The FBA included a section on the Student's antecedent behaviors. The Student's antecedent behaviors were identified as follows: "If the Student views that a staff member is upset with him or speaks too loudly towards him, he will shut down and become non-compliant; he prefers to engage in an activity that he suggests, rather than a staff directed activity, then he is non-compliant; without a plan or schedule, he may become overwhelmed and non-compliant easily." (SD 59.) The FBA data was the basis for the BIP. The BIP identified the Student's strengths, weaknesses, and target behaviors. (Tr. 302-303, 454-456; SD 59.) The Student's behaviors were documented. (Tr. 394-408; SD 17, 166.)

88. This Hearing Officer finds based upon the evidence presented at hearing that the Student's antecedent behaviors were considered and the results documented as required by the FBAs and BIPs dated between April 1, 2014 and April 30, 2015.

89. Despite the fact that it was discussed at the Prehearing Conference, no evidence was presented by Parent regarding compensatory education needs or reimbursement costs. (Testimony of Parent.)

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of Parent and counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

Pursuant to the Illinois School Code, in a due process proceeding, the school district has the initial burden of production to show that the special education needs of the student are identified and that the special education program and related services are adequate, appropriate and available. 105 ILCS 5/14-8.02a (g-55). After the District meets its initial burden of production, the ultimate burden of persuasion then, shifts to the parent as the filing party to prove her case. The parent must prove her case by a preponderance of the evidence. *Id.*

Free Appropriate Public Education (FAPE)

The Individuals with Disabilities Education Act ("IDEA") guarantees children with disabilities the right to a free, appropriate, public education ("FAPE"). 20 U.S.C. §1412(a)(1). In order to determine whether a school district has provided a FAPE requires the determination of whether the school district: (1) complied with the procedural requirement(s) of IDEA, and (2) developed an Individualized Education Program ("IEP") that is "reasonably calculated to enable the child to received educational benefits." *Board of Education of the Hendrick Hudson Central*

School District, Westchester County et. al. v. Rowley, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982).

An affirmative determination in favor of the school district with respect to both prongs of the *Rowley* test leads to an additional inquiry regarding the child's educational placement.

In the instant matter, the due process complaint filed by the Parent alleges a procedural violation to the extent that the District did not have the required IEP Team members present at the IEP meetings convened during the period March 19, 2014 and March 14, 2016. Parent further alleges that the Student's IEP goals in the areas of math, language arts, and speech language were not adequate to assist the Student in making adequate educational progress and that the Student's December 16, 2014 IEP was inappropriate as it did not provide phonemic awareness and social work goals.

Procedural Violation:

A procedural violation does not result in a denial of FAPE unless (1) it impeded the student's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or (3) caused the deprivation of educational benefit. 34 C.F.R. 300.315(a)(2).

Parent alleges that a procedural violation occurred when the District did not have the required IEP Team members present at the IEP meetings convened during the period March 19, 2014 to March 14, 2016 pursuant to §34 C.F.R. 300.321. The following persons must be present for an IDEA compliant IEP Team meeting: parents, general education teacher, special education teacher, LEA representative, and an individual who can interpret the instruction implications of evaluation results. 34 C.F.R. §300.321.

Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that the required IEP team personnel were present at all of the IEP meetings held

during the period at issue, with the exception of the December 16, 2014 IEP meeting, at which a special education teacher was not present. (FF #86.) The District conceded that the required personnel were not present at the December 16, 2014 IEP meeting. However, at the end of the December 16, 2014 IEP team meeting, Parent produced a homebound services certification from Dr. I. The December 16, 2014 IEP was never implemented due to the homebound services certification. The IEP team reconvened after winter break on January 6, 2015 to create an IEP appropriate for homebound instruction. (FF #85.) It is further found that this violation alone did not result in denial of the Student's right to a FAPE, as the December 16, 2014 IEP was never implemented and a homebound instruction IEP was created January 6, 2015, immediately following winter break. Further, the Parent attended all the Student's IEP meetings, provided parental input, and also had her privately retained psychologist and behavioral therapist present at several of the IEP meetings. (FF #65-66, 70.) Based upon the above, this Hearing Officer finds that the procedural violation did not impede the student's right to a FAPE, impede the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or cause the deprivation of educational benefit to the Student.

IEP Goals:

Under IDEA, an IEP must include "(1) a statement of the child's present levels of academic and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum" and "(2)(i) [a] statement of measurable annual goals, including academic and functional goals designed to (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum." 34 C.F.R. 300.320(a). "[T]he IEP should be reasonably calculated to enable the child to achieve passing marks and advance from grade to

grade.” *Id.* at 3036. “[A]n IEP is reasonably calculated to confer educational benefit when it is ‘likely to produce progress, not regression or trivial educational advancement.’” *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7th Cir. 2004.) “Objective factors, such as regular advancement from grade to grade, and achievement of passing grades, usually show satisfactory progress. *Id.*

“The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child’s needs, was left by the IDEA to state and local educational agencies in cooperation with the parents or guardians of the child.” *Rowley* at 207. Educators “have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents.” *Lachman v. Illinois State Bd. Of Educ.*, 852 F.2d 290, 297 (7th Cir. 1988); *Williams v. Milwaukee Public Schools* (E.D. Wis. 2012).

The Parent alleges in her Due Process Complaint notice and Amended Due Process Complaint notices that the Student’s IEP goals in the areas of math, language arts, and speech language were not adequate to assist the Student in making adequate educational progress and that the Student’s December 16, 2014 IEP was inappropriate as it did not provide phonemic awareness and social work goals. Parent did not provide specifics regarding the concerns she had with these goals.¹⁶ (IHO #1, 11, 14, 17, 19, 33.) The testimony and documentary evidence presented at hearing illustrate the following.

The Student was found to have educational needs in the areas of math, phonemic awareness, and speech language. (FF #3.) The Student’s IEPs dated from April 30, 2013 through August 20, 2015 all contained math goals (FF # 72.) These goals provided benchmarks

¹⁶ This Hearing Officer questioned Parent on many occasions regarding her specific concerns with the Student’s IEP goals. In addition, Parent was provided with a minimum of four opportunities to provide this additional specificity when amending her original due process complaint notice.

in order to measure the Student's progress. (FF #72.) The Student's IEPs dated from March 19, 2014 to August 20, 2015 did not contain language and vocabulary goals, other than an articulation goal. (FF #75.) The Student's expressive and receptive language skills were determined by SLP and Parent's private speech pathologist to be within the average range. (FF #27-36, 75.) Further, Parent never disagreed with SLP's evaluations of the Student and the Student's lack of attendance at school inhibited his progress toward his IEP goals. (FF # 31, 33-36.) Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that the District educators have provided the Student with appropriate math, language arts/speech language goals, which considered the Student's present levels of performance, addressed the Student's unique weaknesses, and were designed to enable the Student to make adequate educational progress.

The Parent alleges in her Due Process Complaint notice and Amended Due Process Complaint notices that the Student's December 16, 2014 IEP was inappropriate as it did not contain phonemic awareness and social work goals. The testimony and documentary evidence presented at hearing illustrate the following. The Student's October 8, 2014 and December 16, 2014 IEPs contained a reading goal and established benchmarks in order to monitor the Student's progress toward this goal. This is a phonemic awareness goal. (FF # 73.) Further, the Student was found to have social/emotional and behavioral difficulties. (FF# 3, 87-88). The Student's December 16, 2014 IEP contained a social work goal designed to address the Student's social-emotional and behavioral needs. This goal included benchmarks for the Student's achievement of the goal. Parent conceded in her testimony that this IEP provided a social work goal. (FF #74.) Based upon the uncontroverted testimony at hearing, this Hearing Officer finds that the

Student's December 16, 2014 IEP contained both a phonemic awareness and a social work goal, as required to meet the Student's unique educational needs.

Therefore, it is the determination of this Hearing Officer that, at all times in question, the District has provided the Student with a FAPE.

Least Restrictive Environment (LRE)

Under IDEA, the School District has an obligation to educate a student to the greatest extent appropriate with his nondisabled peers. 20 U.S.C.A. 1412(a)(5)(A); *Board of Education of Township District No. 211 v. Ross*, 486 F.3d 267, 277 (7th Cir. 2007); *Beth B. v. Van Clay*, 282 F.3d 493 (7th Cir. 2002). The Illinois School Code and implementing regulations also require that to the maximum extent appropriate a child with a disability must be educated in the least restrictive environment with children who are not disabled. 105 ILCS 5/10-22.41; Ill. Admin. Code 226.240. Removal from the regular education classroom of a child with a disability should only occur when education in the regular classroom cannot be achieved with the use of supplementary aids and services. 20 U.S.C.A. 1412(a)(5)(A); 34 C.F.R. 300.114(a)(2)(ii). The Seventh Circuit has declined to adopt any sort of multi-factor test for assessing whether a child must remain in a regular school. *Ross, supra*. See also *Beth B., supra*. "The ultimate question is whether the education in the conventional school was satisfactory, and, if not, whether reasonable measures would have made it so. *Id.* The disruptive impact a student has on other students is a relevant consideration when determining if the education was "satisfactory." *Alex R. v. Forrestville Community Unit School District*, 375 F.3d 603 (7th Cir. 2004). "A school district's IEP team is required to assess whether the student's disability-related behavior impedes his or her learning or that of others. *Id.* The District may change a student's placement to a more restrictive setting if the student would not make adequate progress in the less restrictive

placement. *Ross citing Beth B. v. Van Clay*, 282 F.3d 493, 499 (7th Cir. 2002). Courts have consistently held that the progress must be more than minimal. *Polk v. Central Susquehanna Intermediate Unit 16*, IDERL 130 (3rd Cir. 1988). When a student is unable to benefit by being with nondisabled peers, has not made sufficient social emotional progress and requires a smaller classroom with trained personnel allowing for more rapid interventions, Illinois courts have upheld a school district's recommendation and continued placement in a therapeutic setting. *See, e.g., Hiawatha School District No. 426*, 58 IDELR 269 (Feb. 27, 2012).

The testimony and documentary evidence presented at hearing illustrates that the Student commenced kindergarten at DS2 in the resource room. During his initial kindergarten year, the Student was unable to be successful due to daily aggressive behaviors. The Student subsequently repeated kindergarten and continued in the resource room setting during Fall 2013. During that time, the Student continued to exhibit many aggressive behaviors on an almost daily basis. He would kick, push, hit, bite, spit at, and throw things at SE1 and his paraprofessional aid. SE1 had to restrain the Student, sometimes once per day, other times, more than once per day. (FF #4-8.) When he attended the general education classroom, the Student was disengaged, did not want to participate, and could become angry and violent toward SE1 and his paraprofessional aid. Other students in the classroom were surprised and fearful of the Student's emotional outbursts. (FF #10.)

The Student was subsequently placed in the self-contained special education classroom in January 2014. He continued to exhibit verbally and physically aggressive behaviors toward staff including kicking, hitting, spitting, and biting and these behaviors occurred on a daily basis. For a period of time, the Student's behaviors improved. However, any progress the Student made was impacted by his "sketchy" attendance. The Student attended only sixteen days of school

during the period August to November 2014. (FF #17-18.) District personnel who worked directly with the Student, including SE1, SE2, GE, SW, KS, opined that the self-contained special education classroom, the SELF program, was an appropriate educational placement for the Student, as it was designed to address his unique behavioral and academic needs. (FF #21-22.) The testimony of SE1, SE2, GE, SW, and KS, was uncontroverted by Parent. Therefore, this Hearing Officer finds that the self-contained special education classroom at DS2, the SELF program, was the least restrictive environment in which the Student could receive FAPE.

Homebound Instruction:

The Illinois School Code provides that a school district must commence providing homebound instruction services not later than five school days after it receives the physician's statement. *105 ILCS 5/14-13.01* This applies to any Student, not just students with special education needs. The statute and Illinois Administrative Code further provide "special education and related services required by the child's IEP must be implemented as part of the child's home or hospital instruction." Ill. Admin. Code §226.300. Parent provided the District with a series of certifications for homebound instruction commencing at the conclusion of the December 16, 2014 IEP meeting. (FF #23.) These certifications were solicited by the Parent and provided by her to the School District. (FF #23.) The record is devoid of any evidence to support Parent's assertion that the School District recommended homebound instruction as an appropriate educational placement for the Student. (FF #24-25.)

Parent argues that the District made the homebound placement determination. However, this Hearing Officer finds to the contrary. Illinois law requires the District to provide homebound services within five school days of receipt of a physician's statement requesting same. The Illinois Administrative Code requires that, for students with special education and

related service needs, the IEP must be implemented and those services provided as part of the student's homebound instruction. In the instant matter, the IEP team did not determine that homebound instruction was the least restrictive environment in which this Student could receive FAPE. Rather, Parent solicited a certification for homebound instruction and provided it to the District. Parent now attempts to argue that homebound instruction is not the least restrictive environment. This Hearing Officer finds that the District did what was required but not because it believed homebound instruction was the student's placement in the least restrictive environment, but because a doctor, at the Parent's request, certified that the Student had a medical condition that required removal from school. Parent's arguments are disingenuous and without merit based upon the evidence presented.

Evaluations:

Parent further contends that the District failed to evaluate the Student in all areas of suspected disability, specifically, speech language pathology, occupational therapy, central auditory processing, assistive technology, and current grade level performance as of December 16, 2014. A student with a disability must be evaluated in all areas of suspected disability. 34 C.F.R. 300.304(c)(4); *Jaccari J. v. City of Chicago School District*, 690 F. Supp.2d 687, 706. The IEP Team must consider the results of the initial or most recent evaluations of the child; and the academic, developmental, and functional needs of the child. 34 C.F.R. §300.324(a)(iii),(iv). The testimony and documentary evidence presented at hearing illustrate the following.

The Student was referred for a speech language evaluation, and SLP evaluated the Student on February 27, 2014. SLP administered the KLST-2, ROWPVT, EOWPVT. Based upon her findings and evaluation, the Student was provided with speech language services for an articulation error related to the /l/ sound. (FF #26-27.) Parent also procured a private speech

language evaluation on October 23, 2014 and SLP reviewed that evaluation. Parent's private speech language therapist administered the PPVT and EVT. She determined that the Student's needs could be addressed in a single visit and therapy was not indicated. (FF # 28.) The Student was provided with speech language services in the school setting nonetheless. SLP performed a reevaluation of the Student in the spring of 2016. (FF #32.) Parent never disagreed with SLP's evaluations of the Student. (FF # 33.) This Hearing Officer finds that speech language was identified by the District as an area of suspected disability and the District evaluated the Student in that area. SLP's testimony is uncontroverted, an in fact, corroborated by Parent.

Parent further contends that the District failed to evaluate the Student in the area of occupational therapy. However, the record evidence illustrates otherwise. OT3 credibly testified that she performed the initial occupational therapy evaluation of the Student when he entered the District in preschool and subsequently updated her evaluation in March 2014, at Parent's request. OT3 performed five hours of classroom observations as part of her evaluation and continued to work closely with the Student's classroom teachers through March 2014 to establish sensory strategies to assist the Student with his behavioral difficulties. OT3 also provided Alert Program training for District staff members who worked with the Student. (FF #37-43, 49.) Parent engaged the services of a private occupational therapist to assess the Student's fine motor abilities. The private occupational therapist found the Student's fine motor abilities to be age appropriate. (FF #48.) OT1 and OT2 were assigned to provide a reevaluation of the Student in March 2016. Both OT1 and OT2 made numerous attempts to contact the Parent and arrange for reevaluation of the Student. However, the Parent refused to make the Student available for reevaluation. OT1 was also assigned to provide the Student with occupational therapy services during the Summer of 2015. After several scheduled appointments, which Parent either

cancelled or failed to appear for, Parent advised OT1 that she was refusing services. Parent acknowledged at hearing that OT1 had been diligent in her attempts to schedule OT services.(FF #44- 47, 49.) This Hearing Officer finds that occupational therapy was an identified area of suspected disability for this Student. It is further found that the District evaluated the Student in this area at the commencement of the Student's preschool year and in March 2014. Further, the District made attempts to reevaluate the Student in March 2016, and during the summer of 2016. However, Parent refused to make the Student available for said reevaluation.

Parent contends that the School District did not evaluate the Student in the suspected areas of disability of central auditory processing and assistive technology. The Hearing Officer finds that the record is devoid of any evidence to suggest that any of the District's IEP team members or any of Parent's private therapists expressed or identified any concerns with the Student's central auditory processing or the need for an assistive technology evaluation. (FF #56-57.) This Hearing Officer further finds that central auditory processing and assistive technology were not areas of suspected disability for this Student and therefore, the District was under no obligation to evaluate the Student in those areas.

Parent also contends that the Student's current grade level performance was not evaluated as of December 16, 2014. The documentary evidence presented at hearing includes IEPs dated October 8, 2014, December 16, 2014, April 30, 2015, August 20, 2015, and March 14, 2016. All of these IEPs contain information regarding the Student's current grade level performance, despite the fact that the Student had inconsistent and sporadic attendance during the time period at issue, and has not been enrolled in a District School since November 21, 2014. (FF #53.) In addition, after the May 12, 2014 IEP meeting, the Parent agreed in writing that no further

evaluations were necessary. (FF #54.) This Hearing Officer finds Parent's claim that the Student's grade level performance was not evaluated to be without merit.

Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that at all times in question, the District appropriately evaluated the Student in all areas of suspected disability.

Parent next contends that the evaluations of SW, the school social worker; her private psychologist, Dr. G.; private behavioral therapist, WM; private occupational therapist, BJ; private psychiatrist, Dr. I; and SLCT, Sylvan Learning Center Tutor, were not considered by the IEP team in formulating the Student's IEPs. The IDEA only requires consideration of a private evaluation report. It does not require the adoption of any of its findings or recommendations. 34 C.F.R. §300.502. The testimony and documentary evidence presented at hearing reveal the following.

SW provided credible testimony at hearing regarding her evaluations of the Student, ongoing work with him, and attendance at a minimum of four IEP meetings. SW was an active participant at the Student's IEP meetings and she credibly testified that she believed the IEP team considered her recommendations. (FF #59-61, 64.) Parent never disagreed with SW's evaluations and never complained about her services. (FF # 63.) Based upon the evidence presented at hearing, this Hearing Officer finds that SW's evaluation report and recommendations were considered by the IEP team.

With respect to Parent's private psychologist, Dr. G, the uncontroverted evidence shows that he came to DS2 and spoke to the IEP team on at least two occasions. In addition, Parent acknowledged in her testimony¹⁷, Dr. G's numerous recommendations were incorporated into all

¹⁷ Parent's testimony from the February 18, 2016 due process hearing the transcript of which is included in the administrative record of this hearing.

of the Student's IEPs commencing in January 13, 2014. (FF # 65.) KS confirmed in her testimony that Dr. G's evaluations and recommendations were considered by the IEP team and that Dr. G was present at several IEP meetings either in person or via telephone. (FF #65, 69.)

Likewise, with respect to WM, Parent's private behavioral therapist, she prepared an evaluation and report dated November 11, 2013. Parent provided this report to the IEP team. WM provided numerous recommendations which were incorporated into the Student's IEP commencing January 13, 2014. Parent's own testimony corroborated that of KS and the documentary evidence.

Parent's private occupational therapist, BJ, prepared an evaluation and report dated September 2, 2014 and April 10, 2015. (FF # 67.) BJ's evaluation was considered by the IEP team and her numerous recommendations were incorporated into the Student's IEPs commencing October 8, 2014. (FF # 67, 70.)

This Hearing Officer finds that the evaluation reports of Dr. G, WM, and BJ were considered by the IEP team. It is further found that numerous recommendations provided by these individuals were incorporated into the Student's IEPs. The testimony and documentary evidence presented at hearing is further corroborated by Parent's own testimony. (FF #70.)

With respect to Parent's contention that reports provided by Dr. I, Parent's private psychiatrist, and SLCT, the Sylvan Learning Center tutor, were not considered by the IEP team, this Hearing Officer finds that neither Dr. I nor SLCT conducted any evaluations or prepared any reports. Therefore, any written recommendations could not have been considered by the IEP team as none existed. (FF #71.)

This Hearing Officer finds that, at all times in question, the District provided the Student with FAPE by appropriately evaluating him in all areas of suspected disability, and considering

the evaluations Parent's outside providers. Further, the District implemented the recommendations of Parent's outside providers and incorporated their numerous recommendations into the Student's IEPs, which it was under no obligation to do.

Staff Training:

Parent avers that the Student was denied FAPE when District staff working with and implementing the Student's IEPs were not trained in the CPI and Alert Program methods as required by the IEPs dated from March 19, 2014 to August 20, 2015. The testimony and documentary evidence presented at hearing provide as follows.

The March 19, 2014 through March 14, 2016 IEPs all provided that only staff who have had the CPI restraint training will use those techniques to restrain the Student. (FF #13.) SE1, SE2, SLP, SW, and DD were all CPI trained. (FF # 14.) SE1 was the only District employee to restrain the Student and she was CPI trained at the time as required by the Student's IEPs. (FF #15.) The March 19, 2014 IEP provided that Alert Program training had been provided to the special education teacher, speech language pathologist, school social worker, general education teacher, and paraprofessionals working with the Student. (FF #16-17, 42.) This Hearing Officer finds that the District staff who restrained the Student were CPI trained. It is further found that the District provided Alert Program training to the required staff members. Therefore, at all times in question, the District complied with the terms of the Student's IEPs regarding the CPI and Alert Program training of the requisite District personnel. In addition, only staff members with the required training restrained the Student.

IEP Service Minutes:

Parent avers that the Student was denied FAPE when he was not provided with the occupational therapy, social work, and speech language service minutes required by his IEPs

dated from March 19, 2014 through August 20, 2015. The testimony and documentary evidence presented at hearing reveal the following.

OT3 credibly testified that she worked with the Student through March 2014. The Student's attendance was "sketchy" at that time and he was absent for ten (10) of the twenty-four (24) sessions that could have been provided. (FF # 43.) OT1 testified to and provided documentary evidence of her diligent efforts to contact Parent to evaluate the Student and to provide Summer 2015 occupational therapy services which the Parent failed to make the Student available for, cancelled, or eventually refused. (FF #44-47.) Parent confirmed the diligent attempts of OT1 to provide services. (FF #45.) The record is devoid of any evidence to support Parent's suggestion that occupational therapy services were not provided to the Student as per the IEP requirements. (FF #50-51.) Therefore, this Hearing Officer finds Parent's claims regarding the failure of the District to provide the required occupational therapy service minutes to be without merit.

Parent next contends that the Student was not provided with the required social work service minutes as provided for in the March 19, 2014 through August 20, 2015 IEPs. The testimony and documentary evidence introduced at hearing does not support Parent's contention. SW credibly testified that she provided the Student with the required forty (40) minutes per week of social work services when he was in attendance at school. (FF # 62, 64.) On cross examination, Parent elicited testimony to the effect that Parent had never disagreed with SW's evaluations and never complained about her services. (FF # 63.) Based upon the evidence presented at hearing, this Hearing Officer finds that the Student was provided with the required social work service minutes as required by his IEPs and that Parent's claims to the contrary are disingenuous and not supported by the evidence.

Parent also claims that the Student was not provided with the required speech language service minutes as provided for in the March 19, 2014 through August 20, 2015 IEPs. Again, the evidence presented at hearing does not support this contention. SLP credibly testified that the Student's IEPs called for 40 minutes per week of speech language services, which was later reduced to 30 minutes per week because the Student was making good progress toward his goal. Further, the Student's lack of attendance at school inhibited her ability to provide speech language services. However, she was able to provide the required related service minutes when the Student was in school. SLP also attempted to provide services to the Student when he was on homebound instruction, however, she was not always able to do so as the Parent would cancel the scheduled sessions. (FF #31.) On cross examination, Parent elicited testimony to the effect that Parent had never disagreed with SLP's evaluations, never complained about her services, expressed that the services SLP provided were good, and that SLP was an "awesome" District employee. (FF #33, 35.) Based upon the evidence presented at hearing, this Hearing Officer finds that the Student was provided with the required speech language service minutes as required by his IEPs and that Parent's claims to the contrary are disingenuous and not supported by the evidence.

This Hearing Officer finds that, at all times in question, the District provided the Student with the required occupational therapy, social work, and speech language service minutes, and thus provided the Student with FAPE.

Transportation Services:

Parent alleges that the Student was denied FAPE when he was not provided with transportation services (1) to occupational therapy sessions and (2) to and from school as required by the March 19, 2014 and August 20, 2015 IEPs. The testimony and evidence

presented at hearing is devoid of any evidence to suggest that the Student was to be provided with special transportation services to and from occupational therapy services during the time period in question. (FF #78-79.) Further, the Student's IEPs dated from April 29, 2013 through March 14, 2016 provide for special transportation services for the Student to and from school. (FF # 76.) Further no evidence was presented to suggest that these services were not provided on the dates that the Student attended a District school. (FF #77, 79.) This Hearing Officer finds Parent's allegations to be without merit. Further, the Student was provided with the transportation services required by his IEPs (FF # 79.) This Hearing Officer finds that at all times in question, the District provided the Student with FAPE as it pertains to the provision of transportation services.

Extended School Year (ESY) Services:

Extended school year services must be provided only if a child's IEP Team determines, on an individual basis . . . that the services are necessary for the provision of FAPE to the child. 34 C.F.R. §300.106. Decisions regarding the child's eligibility for ESY services must be based on a determination that the child's level of achievement would be jeopardized by a summer break in his structured educational programming. *See Johnson v. Independent School District No. 4*, 921 F.2d 1022, 1027 (10th Cir. 1990). This determination should proceed based on data, both retrospective regarding past regression and rate of recoupment, as well as predictive data, including degree of impairment, rate of progress, behavioral problems, and areas of curriculum needing continuous attention. *Id.*

Parent contends that the Student was denied FAPE when the District failed to provide the Student with extended school year (ESY) services during the Summers of 2014, 2015, and 2016 as required by the Student's March 19, 2014 IEP. The evidence presented at hearing fails to

support Parent's contention. The District was prepared to provide extended school year (ESY) services to the Student during the summers of 2014 and 2015. The Student's April 1, 2014 IEP provided for ESY services to commence on June 16, 2014. The Student's summer services were to consist of math, English language arts (ELA), behavior, and emotional strategies. Educational goals were set to be addressed. Parent refused those services because she was angry with the school district. The Student's April 30, 2015 IEP provided for ESY services to the Student during Summer 2015. The services were to include speech, social work, ELA, and math. The duration of services was determined, and the goals to be addressed were articulated. Parent refused those services. OTI attempted to provide occupational therapy services during summer 2015. However, Parent did not appear at the scheduled appointments and ultimately informed OTI that she was declining services. (FF #80-81.)

The District had not established the Student's eligibility for ESY services for Summer 2016. The Student not been in attendance at a District school since November 20, 2014 and there was insufficient data for the District to make an ESY eligibility determination at the time of the March 14, 2016 IEP meeting. At that time, Parent signed consent for reevaluation of the Student. However, Parent refused to make the Student available to the evaluators. (FF # 82-83.)

This Hearing Officer finds that the District was ready, willing, and able to provide the Student with ESY services during the summers of 2014 and 2015. However, Parent refused these services. This Hearing Officer further finds that the District was unable to make an eligibility determination regarding summer 2016 ESY services as the Student had been out of school since November 20, 2014 and Parent refused to make the Student available for reevaluation pursuant to the March 14, 2016 domain meeting. The testimony and documentary evidence presented was credible and uncontroverted by Parent. This Hearing Officer finds that

Parents claims are without merit and further finds that, at times in question, the District was prepared to provide the Student with ESY services and a FAPE.

Functional Behavior Assessment & Behavioral Intervention Plan:

Parent avers that the Student was denied FAPE when his antecedent behaviors were not considered and the results not measured, as required by the Functional Behavior Assessments (FBAs) and Behavioral Intervention Plans (BIPs) dated between April 1, 2014 and April 30, 2015. The hearing testimony and documentary evidence reveal that an FBA was completed for the Student and made part of the March 19, 2014 IEP, as was a BIP. The FBA included a section on the Student's antecedent behaviors. The Student's antecedent behaviors were identified as follows: "If the Student views that a staff member is upset with him or speaks too loudly towards him, he will shut down and become non-compliant; he prefers to engage in an activity that he suggests, rather than a staff directed activity, then he is non-compliant; without a plan or schedule, he may become overwhelmed and non-compliant easily." The FBA data was the basis for the BIP. The BIP identified the Student's strengths, weaknesses, and target behaviors. The record is replete with documentation of the Student's behaviors. (FF # 87.) Further, this evidence is uncontroverted by Parent.

This Hearing Officer finds, based upon the evidence presented at hearing, that the Student's antecedent behaviors were considered and the results documented as required by the FBAs and BIPs dated between April 1, 2014 and April 30, 2015. (FF #88.) It is further found that, at all times in question, the FBAs and BIPs provided the Student with FAPE.

This Hearing Officer determines that:

At all times in question, the District provided the Student with a FAPE.

The Parent's requests to the contrary are hereby denied.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

Parent's requested relief is denied and the complaint and amended complaints are dismissed with prejudice.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request 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.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: November 4, 2016

/s/: Janet K. Maxwell-Wickett
Janet K. Maxwell-Wickett,
Impartial Hearing Officer
[REDACTED]
Phone: [REDACTED]
Fax: ([REDACTED])
Email: [REDACTED]

APPENDIX A

[REDACTED] v. [REDACTED] SD [REDACTED]
Case No: 2015-0410

Child	[REDACTED] (Student)
Last Attending School	[REDACTED] Elementary School (DS2)
Child's Parent(s)/Petitioners	[REDACTED] (Parent)
Witnesses:	
Director of Pupil Personnel Services	[REDACTED] (KS)
School Social Worker	[REDACTED] (SW)
Special Education Teacher - [REDACTED] School	[REDACTED] (SE2)
General Education Teacher - [REDACTED] School	[REDACTED] (GE)
Speech Language Pathologist	[REDACTED] (SLP)
Psychologist – District [REDACTED]	[REDACTED] (PSY)
Occupational Therapist	[REDACTED] (OT1)
Occupational Therapist	[REDACTED] (OT2)
Diagnostician	[REDACTED] (DD)
Occupational Therapist	[REDACTED] (OT3)
Special Education Teacher [REDACTED] School	[REDACTED] (SE1)
Other Individuals:¹⁸	
Private Psychologist	[REDACTED] (Dr. G)
Private Behavioral Therapist	[REDACTED] (WM)
Private Occupational Therapist	[REDACTED] (BJ)
Sylvan Learning Center Tutor	[REDACTED] (SLCT)
Private Psychiatrist	[REDACTED] (Dr. I)
Schools:	
[REDACTED] Elementary School	District School 1 (DS1)
[REDACTED] Elementary School	District School 2 (DS2)

¹⁸ These individuals are referred to in the Final Determination and Order but were not called as witnesses during the hearing.

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]

Student,

Case No: 2015-0410

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED] SD [REDACTED]

School District.

CERTIFICATE OF SERVICE

I, Janet Maxwell-Wickett, certify that on November 4, 2016, copies of the *Final Determination & Order* were served upon the following persons in the manner indicated:

Sent via Certified U.S. Mail & Electronically via Email

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ILLINOIS STATE BOARD OF EDUCATION

Sent Electronically via Email Only

Andrew Eulass
aeulass@isbe.net

Wanda Schoneweis
wschonew@isbe.net

Dated: November 4, 2016

/s/ Janet K. Maxwell-Wickett
Janet K. Maxwell-Wickett, Hearing Officer

[REDACTED]
[REDACTED]
Phone: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]