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ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

OCT 13 2015

SPECIAL EDUCATION
SERVICES

[REDACTED]
Student,

Case No: 2015-0427

v.

[REDACTED]
Jennifer A. Leisner,
Impartial Due Process Hearing
Officer

School District

FINAL DETERMINATION AND ORDER

PROCEDURAL BACKGROUND

[REDACTED] ("Student") is currently a 5th grade student with a medical diagnosis of Klinefelter Syndrome ("XXY"), a genetic condition present since birth. The Student has been found eligible for special education and related services pursuant to an eligibility designation of Other Health Impairment, which captures the various disabling effects of the Student's genetic condition.¹ The Student had previously attended a public grade school within the [REDACTED] [REDACTED] ("School District") up until his fourth grade year, when his Parents unilaterally placed him at the [REDACTED] ("HPDS") full time. The Student attended HPDS for his fourth grade year, and is still currently

¹ The Student has been eligible for special education and related services since his third birthday. During his tenure at the School District he has been identified as disabled due to his learning disabilities, his social communication impairments (which his educational professionals at one time considered

enrolled there as a 5th grader. (Mother's Testimony, Dr. C. Testimony, Ms. H. Testimony.)

The Parents filed a due process complaint notice ("DPCN")² on May 6, 2015, seeking reimbursement by the School District for the tuition payments to HPDS for 2014 -2015 school year as well as that portion paid by the Parents of the 2015-2016 school year up to and through the date of this decision. The Parents also request that the Student's placement on his IEP be changed to HPDS, and that the School District fund this placement through the end of the 2015-2016 school year, including funding an extended school year program at HPDS. In their DPCN, the Parents also made an unspecified claim for compensatory relief.³

The School District filed its Response on May 21, 2015 in which it categorically denied that the Parents' unilateral placement of the Student at HPDS was appropriate. The School District argued that the Student's program within his public school setting was appropriate and provided him a free appropriate education in the least restrictive environment. The School District

² The Parents seek a hearing pursuant to the *Individuals with Disabilities Education Act* ("IDEA") 20 U.S.C. §1415(f)(1) and (3), the *School Code of Illinois* ("School Code") 105 ILCS 5/14-8.02a, and their respective implementing regulations. *See*, 34 C.F.R. §300.502 and 23 Ill. Admin. Code 226.600-226.690. When the Parents filed their 22-page, single-spaced DPCN, they also attached hundreds of pages of exhibits that were referenced in the DPCN. After conferring with counsel for both parties, the Hearing Officer concluded that she would not review the attachments; but, would instead limit her review of any documentation only to those documents that had been properly admitted into evidenced at hearing. The box of the original attachments, unopened, will be included with the pleadings when the record is returned to ISBE.

³ During her testimony, the mother waived any claim for transportation costs for the 2014-2015 and 2015-2016 school years. (Mother's Testimony.)

sought a ruling denying the Parents' request for reimbursement of HPDS tuition for the 2014-2015 school year (and that portion of the tuition paid by Parents for the 2015-2016 school year). In addition, the School District sought a ruling that the Student's placement for the 2015-2016 school year be the same public school setting as his third grade year, the year he last attended school in the School District. The School District also seeks to have the Hearing Officer deny any compensatory relief.

The parties concluded the Resolution Meeting process by conducting the State-sponsored mediation on May 28, 2015 and attempting settlement negotiations directly through counsel. On June 10, 2015, a telephonic prehearing conference was held in the above matter and the case went to hearing on the following dates: August 18 - 21, August 27, and September 17, 2015.⁴ Counsel for the parties requested the opportunity to submit closing briefs, which were submitted on September 28, 2015.⁵

⁴ The Parents requested a closed hearing. A list of witnesses is attached to this ruling as Appendix A. Both parties submitted binders with exhibits, all of which were admitted into the record. In this opinion, references to the Parents' Exhibits will be P-#; for the School District's Exhibits it will be SD -#. A court reporter was present at the hearing, although copies of transcripts were not available to the Hearing Officer in time to complete this Final Determination and Order.

⁵ Throughout the litigation, counsel for the parties made written requests for extensions of the 45 day hearing deadlines in order to attempt resolution, conduct State-sponsored mediation, and schedule a hearing (including the submission of briefs) around attorney, hearing officer and witness schedules. The Hearing Officer approved the continuances, including setting the last day of hearing on the submission of closing briefs.

ISSUES

The following issues were addressed at hearing:

Issue #1: *Whether, during the period from May 6, 2013 through the present, the School District complied with the procedural protections of the Individuals with Disabilities Education Act ("IDEA") in providing Prior Written Notice ("PWN") in response to various parental requests for information concerning services, accommodations, modifications and changes in placement; and, if not, whether any failure to provide PWN impeded the child's right to a free appropriate public education ("FAPE"), significantly impeded the Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or caused a deprivation of educational benefit to the Student?*

Issue #2: *Whether, during the period from May 6, 2013 to the present, the School District completed a timely and appropriate assistive technology evaluation of the Student; and, if not, whether the Student was denied a FAPE as a result?*

Issue #3: *Whether the School District developed appropriate IEPs for the Student during the period from May 6, 2013 through the present that: addressed the Student's rate of progress in academic and emotional skills; contained accurate and objective Present Levels of Academic Achievement and Functional Performance; and, provided specific IEP goal statements. If not, whether the Student was denied a FAPE as a result?*

Issue #4: *Whether, for the period of time from May 6, 2013 to the present, the School District appropriately implemented the accommodations and modifications contained in the Student's IEPs which addressed the Student's reading and writing deficits to perform at grade-level; and, if not, was the Student denied a FAPE as a result?*

Issue #5: *Whether, for the period of time from May 6, 2013 through the present the School District provided the Student with an appropriate special education program (including content, methodology, or delivery of instruction) based on scientific, researched-based curriculum, with appropriate intensity? If not, was the Student denied a FAPE as a result?*

Issue #6: *Whether, for the period of time from May 6, 2013 to the present, the School District appropriately considered the full continuum of placement options, and whether the School District accordingly made an appropriate placement of the Student in the least restrictive environment? If not, was the Student denied a FAPE as a result?*

Issue #7: Whether, for the period of time from May 6, 2013 to the present, the School District's placement at [REDACTED] Elementary School provided a FAPE to the Student in the least restrictive environment? If not, does the Student require placement at a non-public school in order to receive a FAPE and were the Parents appropriate in unilaterally placing the Student at Hyde Park Day School for the 2014-2015 school year?

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows.

1. The Student Overall

The Student, a fifth-grader, was born with Klinefelter's Syndrome ("XXY") a genetic condition in which a male child is born with an "extra" X chromosome. The Student was diagnosed as XXY at two-and-a-half years of age, and demonstrates many of the common symptoms of this pervasive and umbrella-like syndrome. (Parent's # 57). Specifically, the Student primarily presents with the following attributes at home, in school and in the community: reduced muscle tone and poor gross and fine motor planning, taller than average for same-aged peers, delayed speech and language development, emotional sensitivity (acute social shyness and self-consciousness), anxiety, learning difficulties, poor memory and attention skills, expressive and receptive language difficulties, impairment in executive functioning and difficulties with social pragmatics (that impair the ability to interact successfully with peers). (Id., S.D. #4, Dr. T Testimony, Ms. D Testimony) In addition, the Student demonstrates certain socially rigid behaviors that, for a time, caused him to be considered to be

on the autism spectrum. He also has documentation of other related impairments including: dyspraxia, low endurance, pronated feet, GERD, hiatal hernia, pectus excavatum, kyphosis, visual impairment and Sever's disease. (Parents' ## 38, 49 and 57, S.D. ## 1-73.)

The Student also has notable strengths that provide a counterweight to the impact of his overreaching medical disability. Impressively, every witness who had personal knowledge of the Student uniformly described this young adolescent boy as kind, gentle, intelligent, eager to please, creative and honest. (Mother's Testimony, Testimony of Ms. P, Ms. C1, Ms. C2, Ms. C3, Ms. B., Ms. J., Dr. T., Dr. S., Dr. C and Ms. H.) The record and testimony are also replete with evidence that the Student is part of a loving and tightly-knit family. (Mother's Testimony.) The Student's parents, and his mother specifically, are conscientious and protective; and, over the years they have willingly offered the Student ~ at their own expense ~ an abundance of private therapy and other extracurricular activities designed to help the Student learn and develop socially, academically and functionally. (Mother's Testimony, Parents' ##5 -8, 10, 11, 13 -19, 21, 22, 31 - 33, 35, 39 - 43, 45, 47, 48, 50, 51, 52, 53, 57, 60.)

Similarly, the Student's educators (both public and private) hold him in equally high esteem. (Testimony of Ms. P, Ms. C1, Ms. C2, Ms. C3, Ms. B., Ms. J., Dr. T., Dr. S., Dr. C and Ms. H.) The Student has been attending the School District for over seven years, until he was unilaterally placed at HPDS. (Parents' #52.) From the earliest grades, School District educators demonstrated a genuine

personal interest in the Student and his success at school. (Testimony of Ms. P, Ms. C1, Ms. C2, Ms. B., Ms. J., Parents ##1 - 5.). At IEP meeting for third grade (the last agreed-upon IEP for the Student), the Student's Physical Education teacher expressed a sentiment found throughout his previous IEPs (and in witness testimony): the Student *"is a very soft-spoken young man. He is respectful to his peers and the teacher. On occasion he will participate in class discussions. He will also ask for help when needed [...] As a teacher I would encourage [the Student] to continue to participate in class discussions. He is a wonderful student."* (Parent's #38, 49.) Other School District educators describe the Student as someone who follows school and classroom rules and routines, is polite to staff members, someone who shares humor with peers and teachers, and is creative and imaginative. (Id., Ms. C3 Testimony) In addition, his teachers at HPDS similarly extol the Student's personal strengths. At HPDS, the Student presents as a willing learner, who despite his difficulties, has adapted to a new routine and made strong peer relationships, all the while demonstrating the same appealing attributes noted by his public school educators. (Dr. C Testimony, Ms. H Testimony.) As one of the Student's educators at HPDS noted: "I feel lucky to have [the Student] as a member of my reading and math groups this year and am very excited to see his continued growth as a learner." (Parents' #65). In short, the Student is surrounded by adults at home, in the School District and at HPDS who demonstrate a sincere interest in his educational welfare, and are acting in good faith in advocating for the educational interventions each believes are

appropriate for the Student, even if those ultimate recommendations contradict each other.

Any difficulties documented in the Student's medical or school records regarding learning difficulties, emotional impairment and social interactions clearly stem from the fact that the Student is XXY; and not because the Student is a hostile or otherwise deliberately provocative or underachieving child. (Parents' # 57.) The Student is a "multi-modal learner" who "benefits from a variety of strategies to increase academic success." (Parents' ##38, 49.) Historically, the Student's full-scale IQ falls within the low-average to average range; and the apparent drop in his full-scale IQ score in recent evaluations is not indicative that the Student is declining in cognition, but that "peers his age are making more progress than him." (Parents' ##57, 38, 49, S.D. ## 1 - 72.)

The Student has marked impairment in the areas of working memory, sustaining attention, fine motor control, manual coordination, and poor recall, all of which impair his academic functioning at school. (Parents' #57, 38, 49, S.D. ## 1 - 72.) The last-agreed upon IEP for the Student contained goals in the areas of independent functioning, social-emotional, occupational therapy/fine motor, and reading comprehension. Curriculum-based measurements as well as academic evaluation instruments demonstrate that these impairments impact his academic performance in the areas of reading decoding, reading comprehension, written language and some higher-level math skills. (Parents' ## 57, 38, 49, S.D. ## 1 - 72.) With special education and related services in the school environment

and substantial support outside of the school environment⁶, the Student is able in some highly-structured environments (including test-taking) to produce academic work near or at grade level, and to score within the average range on standardized testing. (Parents' Addendum (NWEA Scores for Spring 2013-2014, and Fall 2014-2015), Ms. C3 Testimony).

In addition to these academic challenges, the Student presents with several functional and emotional issues. (Parents' #57, 38, 49, Ms. G Testimony.) The most notable of these is a pronounced sense of anxiety that is described by many who teach him as "internalized". Specifically, the Student has a pervasive shyness and is very self-conscious and ruminating. (Parents' #57.) He demonstrates poor expressive and receptive communication skills that impair his ability to create and sustain meaningful social relationships with his peers. (Parents' ## 57, 38, 49.) To others, it might appear that the Student is relating to them in a socially passive manner and distant, which can be confused for socially typical behavior among some of his non-disabled young adolescent male peers. (Id., Ms. C3 Testimony.)

Testing clearly indicates that although he can follow basic social rules regarding accurately reading the emotions of others, he is impaired in his ability to make social inferences and problem solve. (Id.) While the Student's records touch on a recurring issue of bullying in school, it is unclear if the Student's

⁶ For example, the Parents, at their own expense, have provided academic support in a Lindamood-Bell reading program since first grade, receiving over 270 hours in that program. (Parents' ## 19, 31, 43 and 60).

noticeable social differences make him a target for his peers, or if these same differences combined with his documented inability to accurately read social cues, combine to create unpleasant social events for him from time to time. (Parents' ## 37, 49).

2. The School District Individualized Education Plans (IEPs).

For the time period at issue in this case⁷ the Student had two operative IEPs: one finalized on December 18, 2013 and another created on April 21, 2014.⁸ Each of these will be addressed in chronological order.

A. The November 6 and December 18, 2013 IEPs.

The Student's IEP Team, which included his mother (who was duly notified and participating fully) began an IEP meeting on November 6, 2013 and finalized that same IEP on December 18, 2015. (S.D. ## 74-137).⁹ The Student's

⁷ May 2013 to the present.

⁸ After the Parents filed their DPCN (and the Student was in attendance at HPDS), an additional IEP meeting was conducted on August 4, 2015 at which additional private evaluation reports were considered, and the IEP Team identified further areas of evaluation for the Student. (S.D. #207, Parents' #54.) The Student's mother signed consent for these evaluations to take place. (S.D. #208). Neither party entered any evidence at hearing regarding the status of these re-evaluations; and their completion was not identified by either party as an issue for this hearing.

⁹ The Student's mother testified that the Student had undergone foot surgery in December 2013 immediately prior to the IEP meeting. (Mother's Testimony.)

mother was given her procedural safeguards at the November 6, 2013 meeting. (Id.).¹⁰

Participating via telephone with the other team members at the November 6, 2013 IEP meeting was Dr. S, a private clinical neuropsychologist whose area of expertise includes boys with XXY. (Dr. S. Testimony)¹¹. During the annual review, Dr. S. gave a written report on her evaluation report of the Student dated in September 2013. (SD ## 110-125). Witnesses who attended this IEP meeting testified that Dr. S's discussion of her report consumed almost all of the

¹⁰ At hearing, Parents' counsel presented an argument for the first time that the School District failed to give the Parents a copy of their procedural safeguards. The documentation clearly shows that the Parents were given their procedural safeguards at the November and December IEP meetings, as the mother admitted signing a document attesting to this fact. (S.D. #74.) The Student's mother testified at trial that while she signed the paperwork indicating that she had received her procedural safeguards on November 6, 2013, she had no recollection of actually taking them home nor she could not locate a copy of them. (Mother's Testimony.) School District witnesses testified (and the documentation supports the conclusion) that, despite the mother's inability to recollect receiving her procedural rights, she was in fact given a copy of them on that date. (Ms. P Testimony, S.D. #74.) Further, she testified that even if she had not been given a copy of her safeguards, any failure to receive them did not substantially impede her son's ability to have a free appropriate public education ("FAPE"), substantially impede her opportunity to participate in the decision-making process for her son or (in and of itself) caused her son a deprivation of an educational benefit. (Mother's Testimony.) Therefore, even if there was a procedural violation of the *IDEA*, it did not rise to any substantive harm.

¹¹ Dr. S testified at the hearing that, among her many other credentials, she has evaluated over 500 children, many of them with XXY. (Dr. S Testimony). During her testimony, Dr. S spent considerable time not only explaining the Student's deficits with regard to his XXY diagnosis; but, she also spent considerable time testifying to the symptoms ~ including the learning difficulties ~ of XXY boys in general. While taking judicial notice of Dr. S's lengthy clinical experience, the Hearing Officer also notes that Dr. S is not a licensed school psychologist and has very limited experience teaching or otherwise working in an elementary public school environment. (Dr. S. Testimony).

scheduled time for the IEP, which then needed to be rescheduled. (Ms. G Testimony, Ms. P Testimony) The Student's mother also testified that because of technical difficulties with the telephone connection, the meeting did not start on time. (Mother's Testimony.)

Dr. S's evaluation report confirmed the Student's history of deficit in the areas of: physical agility and coordination, modulation of emotions and behaviors, fine motor abilities, learning difficulties (especially in reading and writing), memory and peer interactions. (S.D. ##110 - 125.) Dr. S recommended a multisensory approach to learning across all school settings and related services in speech, occupational therapy and social emotional skills. Dr. S. was also adamant in both her written report and her verbal report to the IEP team that the Student needed to be placed in a self-contained setting due to his "anxiety, specific language based learning difficulties, as well as graphomotor dysfunction." (S.D. # 122; Dr. S Testimony; Mother Testimony; add others).

In her testimony at hearing, Dr. S. re-iterated her recommendation to the IEP Team in November 2013 that the Student needed to be placed in a self-contained classroom with other learning-disabled students. (Dr. S. Testimony.)¹²

¹² It is noted that Dr. S has been the Student's evaluating neuropsychologist (working in tandem with other professionals to administer other portions of her evaluations) since 2009. In her 2011 evaluation report she first mentioned the recommendation of the Student attending school in a self-contained environment. (P. #14.) During her hearing testimony she elaborated on this recommendation not only for the Student in particular, but for almost all XXY boys with his learning profile. In both her reports and her testimony, Dr. S. was not as articulate on ways to accommodate the Student's learning style within a

Dr. S's recommendations of this classroom setting were precise: she recommends that the Student receive a multi-sensory approach to learning for his entire school day and across all school settings. She further recommended that the Student needed small classroom sizes with a high adult to child ratio in order to support the Student's pronounced needs in motor planning (e.g., classroom organization), language processing, executive dysfunction and poor regulation of anxiety and impulsive behavior. Dr. S. described the Student as a child who internalizes his anxiety and who, despite looking outwardly quiet to adults around him, would be so overwhelmed with anxiety regarding his inability to keep up in a classroom environment that it would cause him to miss instruction and fall further behind. (Dr. S. Testimony.)

In her hearing testimony, Dr. S. confirmed that her recommendations regarding the Student's school environment and placement were made on the basis of her clinical evaluations, and conversations with the Student and his mother about his school environment and experience. Dr. S. testified that in none of her history evaluating the Student since 2009 did she make any independent assessment of the Student's school environment by either observing him at school or by independently interviewing school staff about the Student. Dr. S. testified that the only school records she reviewed were those provided by the mother; and, that she did initiate any contact with the School District to obtain any additional educational records of the Student or to otherwise

general education setting as she was in describing the type of self-contained environment she would recommend for the Student. (Dr. S. Testimony.)

familiarize herself directly with the Student's placement, curriculum or educators. (Dr. S. Testimony.)

The school-based members of the team testified at hearing that they received Dr. S's report from the Parent just prior to the IEP meeting on November 6, 2015. (Ms. C1. Testimony.) Several witnesses testified that the phone connection with Dr. S was poor, and that the acoustics in the room made it difficult for the IEP team in the room to communicate clearly with Dr. S. (Ms. C1 Testimony, Ms. P Testimony, Mother Testimony). Given the constraints on time and communication, the IEP meeting was adjourned and reconvened on December 18, 2013.

On December 18, 2013, the IEP Team reconvened and finished the IEP document. (Parent's #38, Ms. P Testimony.). Dr. S. again participated via telephone, and the Student's mother was accompanied by an educational advocate. (Id.) The December 18, 2013 IEP meeting sets forth goals in the areas of independent functioning, social/emotional, occupational therapy, English/Language Arts/Reading. The IEP Team agreed on continuing to place the Student in the general education setting for his art, mathematics, music, science, physical education, social studies, World Language and Library classes. The Student received related services in occupational therapy (independent functioning) and social work and specialized instruction in Language Arts. (Parents' #38, Ms. P Testimony, Ms. G Testimony) both by push-in services in the classroom and pull-out services with a provider. (Id.)

As there are no conference summary notes of either the November 6 or December 18, 2013 IEP meetings, it is unclear how much consideration was given to Dr. S's recommendation for a more restrictive setting at this time. The Parents submitted a written report of their concerns to the IEP Team, which was captured in the final IEP document, and did not reference a request to consider a more restrictive placement. (Parents' #38, S.D. ## 135-137, Mother Testimony, Ms. P Testimony.) The mother did sign the 10-day waiver to allow the placement to be implemented as written. (Parents' #38.)¹³ Given these facts, and the fact that the Student's mother had received her procedural safeguards and was accompanied by an educational advocate, it is reasonable to conclude that she was in agreement with the services and placement set forth in the final December 18, 2013 IEP document.

Also at the December 18, 2013 IEP meeting, the Student's mother signed an Assistive Technology Referral form (S.D. ## 138-140.) The Student's mother testified that she had verbally requested an Assistive Technology evaluation (AT evaluation) at the November 6, 2013 IEP meeting; however, the case manager testified that she did not recall the request for an AT evaluation being raised until

¹³ At hearing, the School District put on evidence regarding some self-contained, multi-sensory programs ostensibly designed to meet the needs of children with similar learning profiles as the Student. (Ms. L Testimony.) There is no evidence that these self-contained programs were ever brought to the Parents' attention at any previous IEP meeting for the Student. In fact, the majority of the School District witnesses were firm in their belief that the appropriate placement for the Student was in the general education environment with special education and related supports. It is noted, however, that the School District may provide a more complex continuum of placement options than a simple choice between a general education setting and HPDS. (Ms. L Testimony)

the December 18, 2013 IEP meeting. (Mother's Testimony, Ms. P Testimony.) Given that the mother signed the AT evaluation referral form two days after the December 18, 2013 IEP meeting, it is reasonable to conclude that she made her request for an AT evaluation in December 2013. Since the AT evaluation referral form was signed immediately before the holiday break (School District addendum), the AT referral was not processed until January 17, 2014. (S.D. ## 141, Ms. F Testimony). The AT evaluation was completed on March 13, 2014 and the report was finalized on March 27, 2014. (S.D. ##141-144, Ms. F Testimony).¹⁴

B. April 24, 2014 IEP.

The IEP was revised without a meeting on April 24, 2014, at the end of the Student's 3rd grade year to allow for AT services to be added. (Parents' #49.) The IEP indicates that "the parent waived a formal IEP meeting. The IEP Meeting paperwork was given or sent to the parents on 4/24/2014 [...] A copy of the Waiver of IEP Revision Meeting is attached." (Id.) The April 24, 2014 IEP re-documents the goals and objectives and accommodations contained in the December 18, 2013 IEP. (Id.) The IEP revision captures the AT evaluation, and lists several AT devices (Portable Word Processor, Word Prediction Technology and Text to Speech Technology) that could be utilized by the Student at school.

¹⁴ The Student's mother was attentive to the progress of the AT evaluation. Since the December 2013 IEP meeting the Student's mother sent several emails attempting to ascertain the status of the AT evaluation and the reasons for the delays. (Parents' ## 41, 42). She was similarly, and appropriately concerned at the unexplained delays in actually providing the appropriate AT devices to her son after the evaluation was complete and even after the IEP was revised to account for the recommendation for AT. (Parents' ##45, 47, Mother's Testimony.)

(Id.) The Student's placement and related services remained largely unchanged.

(Id.) The Student's mother testified that she did not make any objection to the items contained in this IEP revision. (Mother's Testimony.) Notwithstanding the clear recommendation in the March 2013 AT Evaluation Report and the updated April 2014 IEP, the Student was not provided with any Assistive Technology for the 2014-2015 school year. (Mother's Testimony, Ms. F testimony.) The School District could not give any adequate explanation as to the complete lack of providing Assistive Technology to the Student at all in the second half of the 2014-2015 school year, except scheduling delays in performing the AT evaluation, administrative delays in memorializing the AT evaluation report recommendations until late April 2014, and bureaucratic delays in providing AT to the Student before the end of the 2014-2015 school year. (Mother's Testimony, Ms. C2 Testimony, Ms. F Testimony.) It is undisputed that even though the Parent signed an AT evaluation referral in December 2013 the Student never received an AT device, even after the AT evaluation report specifically recommended it. (Id.)

3. Unilateral Placement at HPDS.

The record is undisputed that on May 29, 2014 the Parents sent the Student's Case Manager a letter providing their 10-day notice of their intent to unilaterally place the Student at HPDS for the 2014-2015 school year at public expense. (Parents' #52.) Both the Student's mother and his case manager testified that the Student's mother informally notified the School District that the

family was exploring HPDS both verbally and via email, prior to sending this letter. (Parents' ## 50, 51, Mother's Testimony, Ms. C1 Testimony.) The Student's mother was clear in communicating with the School District that her interest in HPDS as late as May 8, 2014 was exploratory, and that she was not yet ready to request a change in placement. (Parents' #51.) The School District, therefore, was reasonable in not calling an actual IEP meeting in April 2014 to discuss a change in placement as the Student's mother was clearly not requesting a change in placement at that time. (Parents' ##49, 51.) Even if (as the Parents argued at hearing) the School District was on notice that the Parents were exploring HPDS, there is no evidence until the actual May 29, 2014 letter that the Parents intended to seek the placement at the School District's expense. (Parents' ##49 -52.)

The Student was then enrolled at HPDS in the Fall of 2014. (Parents' #55.) There is no evidence that any subsequent IEP regarding the Student's unilateral placement took place, or that the Student's IEP Team officially considered a change in placement. On November 17, 2014, the Parents' obtained counsel who requested a response from the School District as to its position on the unilateral placement. (Parents' # 56). On November 30, 2014, counsel for the School District replied and informed Parents' counsel that the School District would not fund the placement at HPDS. (Parents' #58.)

Confusing this timeline even more, the Parents obtained another clinical neuropsychological evaluation from a Dr. T in November 2014. (Parents' #57.)

Dr. T evaluated the Student on November 11 and November 19, 2014 and drafted a report on November 20, 2014. (Parents' # 57, Dr. T Testimony.) The Parents supplied Dr. T's report to HPDS staff (Dr. C Testimony), but did not provide it to the School District at that time; nor, did Parents' counsel reference or attach Dr. T's evaluation in its correspondence of November 17, 2014. (Parent's #56.) Once the School District obtained a copy of the report, the IEP Team reconvened an IEP meeting on August 8, 2015 to consider Dr. T's report as well as a private speech and language report (Parents' #54, Ms. J Testimony). At the August 8, 2015 IEP meeting additional areas of evaluation were identified by the IEP Team and the Student's mother gave informed written consent. (S.D. # 208.) Neither party provided further evidence on the status of these re-evaluations; and they are not considered a part of this DPCN.

In her report, Dr. T restates the Student's diagnosis of XXY and provides additional evaluation evidence that the Student has marked impairments in the following areas: low average full scale IQ scores (with nonverbal IQ higher than verbal IQ), expressive and receptive language, and memory. She also noted that the Student exhibits insecurity, shyness and poor judgment consistent with his diagnosis as XXY. (Parents' # 57.) She describes the Student as impulsive, notably self-conscious, and anxious. (Id.) She confirms that the Student has impairments with reading and working memory. (Id.) In her testimony, Dr. T admitted that she is very familiar with HPDS and its curriculum, and her report specifically mentions HPDS and recommends that the Student be educationally

placed there. (Dr. T Testimony, Parents' #57.) The timing of Dr. T's evaluation and report, combined with the timing of the Parents' counsel's correspondence with the School District strongly suggests that the decision to have the Student evaluated by Dr. T occurred **after** the Parents had informed the School District of their decision to unilaterally place the Student at HPDS and not before. In short, Dr. T's report does not appear designed to persuade the Student's IEP team to consider a change in placement as much as it appears to be designed to help HPDS staff plan for the Student.

Like Dr. S, Dr. T testified that she is not a school psychologist, that she relied on her interviews with the Student's mother and the Student (in addition to obtaining any of the Student's educational records from his mother), that she did not initiate any communication with the School District to obtain information for her evaluation, and that she did not visit the placement recommended in the Student's then-current IEP. (Parents' #57, Dr. T Testimony.) Predictably, Dr. T testified that she believes that HPDS provides a placement that addresses the Student's needs as indicated in her report. (Id.)¹⁵

Once at HPDS, the Student's team there created an Individual Learning Plan ("ILP") on or about September 24, 2014. (Parents' #55, Mother's testimony,

¹⁵ The School District spent some time at hearing attempting to dispute the actual conclusions of Dr. T's report. School psychologist, Ms. S, testified at length about the details of Dr. T's report and conclusions. (Ms. S. Testimony). Dr. T and Ms. S each offered testimony to support their respective conclusions regarding the Student's ultimate placement. (Ms. S Testimony, Dr. T Testimony.) Even so, the information provided in Dr. T's evaluation report is cumulative in nature and does not provide any substantial new information on the Student's disabilities. (Parents' #57, Dr. T Testimony, Ms. S. Testimony.)

Dr. C Testimony, Ms. H Testimony.) All of the HPDS staff who testified, as well as the Student's mother, admitted that the School District was not contacted prior to the creation of the ILP, and that no attempt was made at that time to include the School District in the educational planning of the Student at HPDS. (Parents' #55, Mother's Testimony, Dr. C. Testimony, Ms. H. Testimony.) All of the HPDS staff also admitted that the ILP is an internal document created by HPDS staff independent of any meeting resembling an IEP meeting. (Dr. C. Testimony, Ms. H. Testimony). There is no evidence to show that the creation of the ILP for the Student at HPDS in the Fall of 2014 provided any of the procedural protections provided by the *IDEA*, or that it specifically attempted to incorporate any of the stated goals and objectives contained in the Student's last agreed-upon IEP. (Id.)¹⁶ In short, the Student's Fall 2014 ILP is an internal document HPDS with little or no nexus to the Student's IEP currently in effect at the time it was drafted. (Mr. C Testimony.)

¹⁶Dr. C, the Executive Director of the HPDS testified that the Student's ILP was drafted in a manner consistent with those of every student at HPDS. Dr. C testified that the Student's team met and drafted the ILP and then presented it to the Parents in written form. (Dr. C Testimony). The Fall, Winter and Spring ILPs for the 2014-2015 school year contain a multitude of goals and objectives that Dr. C and the Student's HPDS teacher (Ms. H) admitted were more programmatic in their design than written to the individual needs of the Student. (Parents' ##55, 57, 61, Dr. C Testimony, Ms. H Testimony.) It appears that HPDS relies more on the overall design of its school programming and admission criteria, rather than the specifics of the Student's evaluation and school data in designing the ILP. (Id.) That said, there was ample evidence from HPDS that despite the more generalized design of the Student's ILP, the staff at HPDS went to great lengths to implement the Student's ILP in an individual manner. (Dr. C Testimony, Ms. H. Testimony, Mother's Testimony.)

The implementation of the Student's ILP, however, seems highly individualized. (Dr. C Testimony, Ms. H Testimony, Mother's Testimony.) HPDS provides a highly structured educational environment with extremely high teacher to student ratios (never exceeding 5:1), and a highly-selective admission criteria (no students are admitted with cognitive, autistic or extreme emotional disabilities) limiting the student population to students presenting primarily with learning disabilities as the core commonality. (Id.) All of the HPDS staff that testified at hearing (in addition to the Student's mother and Dr. T.) seemed relatively unconcerned with the fact that at HPDS, the Student is limited in his exposure to his non-disabled peers. (Dr. C. Testimony, Ms. H Testimony, Mother's Testimony, Dr. T. Testimony.) Dr. T. explained her comfort with the fact that the Student was being educated at HPDS exclusively with other disabled students by categorizing his HPDS classmates as his "true peers." (Dr. T. Testimony.)¹⁷

¹⁷ Dr. C, Ms. L and Mr. K offered detailed testimony on the process by which the Student could matriculate back to School District programming, should HPDS be considered his IEP placement. (Dr. C Testimony, Ms. L Testimony, Mr. K Testimony.) Dr. C testified that HPDS staff generally monitor a student's progress, and make an internal decision to initiate contact with a placing school district when HPDS is ready to recommend a return to school district programming. (Dr. C.) Mr. K described a more IEP-centric approach in which the School District would be maintaining frequent communications with a private-placement school and would work in tandem with that school's staff to help design programming and actively assess when a student is ready to return to the School District and which School District locations are appropriate. (Mr. K Testimony.) The Hearing Officer agrees that in cases where a private placement is part of a Student's IEP, the School District should take an active role in determining when and how a student is to return to School District programming.

The Student's mother (as well as his HPDS teacher) confirms that at HPDS the Student appears less anxious and more socially comfortable in a peer group of other children with disabilities similar to his. (Mother's Testimony, Ms. H. Testimony.) While it is understandably reassuring to the Student's mother and his HPDS teacher that he appears comfortable with his classmates and teachers at HPDS, the evidence strongly suggests that the Student's relative comfort and decreased anxiety is due more to the fact that he isn't exposed to the socially more dynamic and difficult environment of a general education setting than because he's actually learning social and emotional strategies to effectively deal with his acute shyness and emotional fragility. (Id.) It is unclear whether, after a year at HPDS, the Student has internalized the necessary social and emotional strategies he would need to carry over into a more generalized school setting; or whether he has simply received a break from the stressors of being around his non-disabled peers on a daily basis while trying to make academic progress at or near grade level in a mostly general education setting.¹⁸

Similarly, the Student's educational progress at HPDS, while positive overall, is **not** markedly more dramatic than his progress and grades while enrolled at the School District. Given the stark differences between the instructional systems at the Student's last School District placement and HPDS, in addition to the radically different measurement criteria contained in his last

¹⁸ Mr. C, the Student's social worker at the School District testified that the delivery of social work services at the School District is designed to maximize the Student's exposure to the general education setting to facilitated interaction with his general education peers. (Mr. C Testimony.)

agreed-upon IEP and his ILPs, the one consistent measure of the Student's progress in both environments is his performance on his [REDACTED] [REDACTED] ("NWEA") progress reports. (Parents' Appendix, SD # 230.)

The NWEA is the one standardized evaluation given to the Student in both his School District placement and his HPDS placement. (Id.) While there are outstanding and unresolved issues regarding whether the Student took the NWEA under similar conditions in both environments, the test results from the two placements are roughly similar. (Id.) In both environments, the Student met or exceeded District-level means in the areas of math and reading. (Id.) This comparison is not a clear 1:1 correlation however, as the NWEA scores for Spring 2012-2013 (while the Student was enrolled in the lessor restrictive environment of the School District) reflected the additional extracurricular support provided by the Parents in the form of Lindamood-Bell instruction and outside therapies. (School District # 230, Mother's Testimony.) In short, the once constant is that when the Student is highly-supported either in the protective environment of HPDS or in a less restrictive educational placement in the School District with high levels of extracurricular academic and emotional support provided by his Parents, he performs approximately the same in an academic sense.¹⁹

¹⁹ Counsel for both parties introduced much less reliable and highly informal measurements of the Student's progress throughout the hearing, in the manner of report cards and isolated examples of the Student's work. (Parents' Appendix, SD ## 181.) While it was informative to see examples of the Student's handwriting and note-taking, or to see how (with modifications to his curriculum and special education supports) he was measured against his peers by his School District educators, none of this evidence was determinative in

CONCLUSIONS OF LAW

Overview

This case focuses primarily on whether the Parents were legally justified in unilaterally placing the Student at the HPDS; and, whether the School District should ultimately bear the costs for the Student's attendance at HPDS for the 2014-2015 and 2015-2016 school years. The Parents, through their counsel, have chosen to raise six additional issues (with which the School District has consistently disagreed), culminating in the ultimate decision of funding the Student's attendance at HPDS. Before delving into the details of each of these individual issues, it is important to keep some overriding legal requirements in mind.

Since 1975, when Congress enacted *The Education of All Handicapped Children's Act* (now known as the *Individuals with Disabilities Education Act*, 20 U.S.C. §1400, et seq.), it has been federal law that eligible children with disabilities are entitled to a free appropriate public education ("FAPE") in the least restrictive environment ("LRE") ~ that location where an eligible child with a disability may be appropriately educated "to the maximum extent appropriate, with non-disabled children." *Beth B. v Van Clay*, 36 IDELR 121 (7th Cir. 2002), *citing*, 20 U.S.C. §1412(5). As the United States Court of Appeals for the Seventh

getting an accurate sense of the Student's progress or lack thereof, in his different educational environments. Since the record is replete with the fact that the Student struggles with his handwriting, his organization, his focus, his memory and his ability to access the general education reading curriculum without support, his work samples and report cards were simply additional proof of the nature and extent of his disabilities overall. (*Id.*)

Circuit has stated, “[t]he FAPE provision and the LRE provision are two sides of the same IEP coin.” *Id.* This fundamental joining of an appropriate education of eligible children in an environment that will most closely mirror a traditional educational setting meets the *IDEA*’s most fundamental purpose: “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C. §1400(d)(1)(A).²⁰

In the intervening decades since this statutory scheme was created, there have been regular updates to the *IDEA* and its implementing regulations,²¹ designed at their core to recognize that “disability is a natural part of the human experience” and that it is sound public policy to improve “educational results for children with disabilities” in order to allow these children “equality of opportunity, full participation, independent living, and economic self-sufficiency.” 20 U.S.C. §1400(c)(1). In the most practical sense, the *IDEA*, the *School Code*, and their respective implementing regulations seek to make the ordinary benefits of public education available to students with disabilities

²⁰ The *IDEA*’s other stated purposes (to ensure that the rights children with disabilities and their parents are protected, and to assist States, localities, educational service agencies, educators and parents to provide for the education of all children with disabilities) are no less important, and will be addressed further in this opinion. *See*, 20 U.S.C. §1400(d).

²¹ In Illinois, Article 14 of the *Illinois School Code*, 105 ILCS 5/14, and its implementing regulations, provides the State’s counterpart to the federal requirements set forth in the *IDEA*.

between the ages of 3 -21. In this hearing, the objective is to resolve the issues presented below not only with the facts presented to the Hearing Officer, but also to resolve the issues below with the overall purpose of the *IDEA*.

Therefore, based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows for each of the issues presented by the parties.

Issue #1: *Whether, during the period from May 6, 2013 through the present, the School District complied with the procedural protections of the Individuals with Disabilities Education Act ("IDEA") in providing Prior Written Notice ("PWN") in response to various parental requests for information concerning services, accommodations, modifications and changes in placement; and, if not, whether any failure to provide PWN impeded the child's right to a free appropriate public education ("FAPE"), significantly impeded the Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or caused a deprivation of educational benefit to the Student?*

As stated above, one of the primary goals of the *IDEA* is to "ensure that the rights of children with disabilities and parents of such children are protected." 20 U.S.C. §1400 (d)(1)(B). *See also*, 20 U.S.C. §1412(a)(6)(A) ("Children with disabilities are afforded the procedural safeguards required by section 1415 of this title"). One of the many procedural rights offered to eligible children and their parents is Prior Written Notice ("PWN") that requires a school district give written notice to a parent or eligible student that includes:

- a. a description of the action proposed or refused by the agency;
- b. an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure,

- assessment, record or report the agency used as a basis for the proposed or refused action;
- c. a statement that the parents of the child with a disability have protection under the procedural safeguards of the IDEA, and if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
 - d. sources for parents to contact to obtain assistance in understanding the provisions of the IDEA;
 - e. a description of other options considered by the IEP Team and the reason why those options were rejected; and,
 - f. a description of the factors that are relevant to the school district's proposal or refusal.

20 U.S.C. §1415(c)(1).

If a violation of procedural safeguards, such as PWN, is alleged at a due process hearing, an impartial due process hearing officer only has jurisdiction to consider it if the alleged procedural violation (a) impeded the Student's right to a FAPE; (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the Student; or, (c) caused a deprivation of educational benefits to the child. 20 U.S.C. §1415(f)((3)(E)(ii).

The Parents submit that on May 29, 2015, they gave the School District a written unilateral placement letter that triggered the School District's obligation to provide them with PWN, which they then alleged the School District failed to do. (Parents #52.)²² As a result, the Parents submit that the failure to provide them with the required PWN impeded the Student's right to a FAPE, significantly impeded their opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or caused a deprivation of educational benefits to the Student.

A close scrutiny of the actual unilateral placement letter shows that it is a frank declarative letter stating that the Parents have already made a decision to place the Student at HPDS at public expense, and that the letter "serves as our 10 day notice for unilateral placement at public expense due to a lack of FAPE." (Parents #52.) The letter sets forth the Parents' reasons for making the decision to unilaterally place the Student at HPDS in detail and attaches a graph that ostensibly demonstrates a downward trend in the Student's educational performance. (Id.) On its face, the letter does not ask the School District to respond; although, by giving notice of the unilateral placement at public expense, the Parents clearly open the door to the School District to respond as to whether or not the School District will agree to the change in placement or not. Prior to the April 24, 2015 IEP revision, the Student's mother was investigating

²² The Hearing Officer concludes that the unilateral placement letter was delivered by the Parents to the School District more than ten days prior to the date the Student was removed from the School District to attend class at HPDS; and, accordingly was made in a timely manner. *See*, 20 U.S.C. §1412(a)(10)(C)(iii).

HPDS (Mother's Testimony). Although the Student's mother was open about investigating HPDS with School District staff, she was deliberate in not presenting a potential placement at HPDS to the IEP Team for its consideration even as late as May 8, 2015 (a mere three weeks before sending the unilateral placement letter) when she sent an email to Ms. C2 stating about HPDS: "I do not think I am going to call an IEP meeting to request a change of placement, but I will let you know if we do decide to go that route." (Parents' #51, Mother's Testimony, Ms. C2 Testimony.) None of the preliminary conversations between the Student's mother and School District personnel rise to a level of requiring PWN from the School District, as there is clearly no action for the School District to propose, or refrain from proposing, in response to them.

The School District submits that the 10-day unilateral placement letter did not require the provision of PWN to the Parents. The Hearing Officer agrees. Facially, neither the *IDEA*, the *School Code*, nor any of their respective implementing regulations require a response to a unilateral placement letter by a school district once one is received. The statutory purpose of a unilateral placement letter is as part of a checklist used to determine if the Parents are even eligible for claiming reimbursement. 20 U.S.C. §1412 (a)(10)(C)(iii). The clear thrust of the 10-day unilateral placement letter is to allow a school district the opportunity to further evaluate children and/or to convene IEP meetings to address any other educational options. *Id.* The Parents have not provided any

legal authority indicating that the receipt by the School District of a unilateral placement letter is, in and of itself, a trigger for a response.

Even if there was a legal obligation to provide PWN upon the receipt of a 10-day unilateral placement letter, that obligation was met here. Several months after the Parents gave Ms. C2 their unilateral placement letter, counsel for Parents followed up with a letter to the School District's top administrator, asking **for the first time** that the School District respond to the Parents' unilateral placement letter. (Parents' #56.) The School District responded, via counsel, on November 20, 2015 stating not only that the School District was declining to fund the unilateral placement at HPDS; but also specifically referencing the Student's then-current IEPs of December 18, 2013 and revision on April 24, 2014 as the basis for the School District's decision not to fund HPDS. (Parents' #58.) As has been explained at length above, the December 18, 2013 IEP (and the April 24, 2014 revision) covered the Student's educational plan in detail. The Hearing Officer concludes that these IEPs themselves consist of PWN regarding the School District's decision not to fund HPDS; and, that reference to these IEPs by the School District's counsel was sufficient PWN to the specific request by Parents' counsel on November 17, 2014. (Parents' #56.)

Furthermore, even if the School District's response to the letter from Parent's counsel did not constitute PWN, there is no evidence that such behavior impeded the Student's right to a FAPE, significantly impeded the Parents' opportunity to participate in the decision-making process regarding the

provision of FAPE to the Student, or caused a deprivation of educational benefits to the Student.

Ruling on Issue #1: In Favor of the School District.

Issue #2: Whether, during the period from May 6, 2013 to the present, the School District completed a timely and appropriate assistive technology evaluation of the Student; and, if not, whether the Student was denied a FAPE as a result?

The Parents submit that during the time period set forth above, the Parents made a written request of the School District for assistive technology and that the School District failed to conduct a timely and appropriate assistive technology evaluation. The Parents further submit that the as a result, the Student was denied a FAPE. The School District submits that for the time period set forth above, it appropriately and timely evaluated the Student, and provided a timely and appropriate assistive technology evaluation of the Student. The School District denies that its actions concerning the assistive technology evaluation caused a denial of FAPE to the Student.

The facts are straightforward. The Student's mother made a written request for an assistive technology evaluation ("AT Evaluation") at the December 18, 2013 IEP meeting. (S.D. ## 138-140.) The AT referral was formally started by the School District in early January and the actual evaluation was completed in March 2014. It then took 125 days (until April 2014) to memorialize the AT recommendations in the March 2014 into the Student's IEP. Even after assistive technology was added to the Student's IEP, none of the individual AT

devices recommended by the AT evaluation were provided to the Student during the 2013-2014 school year. (Mother's Testimony, Ms. F Testimony.)

Substantively, it is also stipulated by the parties that the use of specific AT devices was necessary for the Student to benefit from his education, as the AT evaluation specifically recommends devices not already available to the Student in his current setting. (Ms. F Testimony) By adding the AT recommendations to the IEP, these services are identified as necessary to provide the Student a FAPE.

Assistive technology evaluations are considered a type of assistive technology service pursuant to the *IDEA*. Similarly, providing the actual AT device to the Student is also considered an AT Service pursuant to *IDEA*. 20 U.S.C. §1401(2)(A); 34 C.F.R. §300.6. Unlike the types of evaluations contemplated pursuant to 20 U.S.C. §1414, the *IDEA* does not expressly set forth evaluation timelines for AT Evaluations. Nevertheless, in this case the time between the date the Student's mother signed the referral paperwork until the AT recommendations were memorialized in the IEP well exceeded the 60 school days for other types of evaluations. *See*, 23 Ill.Admin.Code ¶226.111(d). The delay in completing the AT evaluation, memorializing the AT recommendations in the Student's IEP, and the utter lack of a provision of any AT device pursuant to that evaluation constitutes a failure of the School District to provide AT services to the Student, and denied him a FAPE.

Ruling on Issue #2: In Favor of the Parents

Issue #3: *Whether the School District developed appropriate IEPs for the Student during the period from May 6, 2013 through the present that: addressed the Student's rate of progress in academic and emotional skills; contained accurate and objective Present Levels of Academic Achievement and Functional Performance; and, provided specific IEP goal statements. If not, whether the Student was denied a FAPE as a result?*

And

Issue #5: *Whether, for the period of time from May 6, 2013 through the present the School District provided the Student with an appropriate special education program (including content, methodology, or delivery of instruction) based on scientific, researched-based curriculum, with appropriate intensity? If not, was the Student denied a FAPE as a result?*

As these two issues are closely related, they will be addressed together.

The Parents submit that for the time period stated above, the School District denied the Student a FAPE by failing to create IEPs that addressed the Student's alleged failure to make meaningful academic and emotional progress towards previous IEP goals. Moreover, the Parents submit that the School District denied the Student a FAPE by failing to create specific goal statements addressing the Student's stated deficits in academic and functional performance.

The School District submits that for the time period stated above the Student was not denied a FAPE due to the Student's IEPs. The School District further submits that the Student's IEPs for this time period appropriately addressed the Student's rate of progress in academic and social skills, contained accurate and objective Present Levels of Academic Achievement and Functional Performance and provided appropriate IEP goal statements.

A. *Legal Framework.* The United States Supreme Court has ruled that eligible children with disabilities are entitled to have an IEP that, on its face, provides for “personalized instruction with sufficient support services to permit a child to benefit from that instruction.” *Bd. of Education of the Hendrick Hudson Central School District v. Rowley*, 533 IDELR 656 (1982). The 2004 legislative revisions to the *IDEA* added much more specificity as to what is required for each IEP. All IEPs must be written according to the needs of each student who meets eligibility guidelines under the *IDEA* and state regulations. Every IEP must contain the following:

- (a) The child's present levels of academic and functional performance;
- (b) Measurable annual goals, including academic and functional goals;
- (c) How the child's progress towards meeting the annual goals are to be measured and reported to the parents;
- (d) Special education services, related services, and supplementary aids²³ to be provided to the child;
- (e) A statement of services to be provided, including when the services are to begin, the frequency, duration and location for the provision of services;
- (f) Program modifications or supports provided to school personnel on behalf of the child;
- (g) A statement of the time the child will spend in a general education setting;
- (h) A statement and explanation of any time the child will not participate with his or her nondisabled peers;

²³ Based upon peer-reviewed research to the extent practicable. (Id.)

- (i) A statement of accommodations to be provided during state and district assessments that are necessary to measuring a child's academic and functional performance;
- (j) A transition plan, when appropriate.²⁴

20 U.S.C. §1414(d)(1)(A)(i).

B. The Student's IEPs²⁵

As set forth above, the Student has XXY, which impacts him at school in a multitude of ways, but most especially in his ability to learn, retain and apply information; to regulate his emotional state; and, to interact appropriately with his peers. In order to determine if the School District IEPs are appropriate, they must be reviewed in light of the Student's identified impairments.

On their face, the Student's operative IEPs properly identify the Student as eligible for services. The IEPs also set forth with appropriate specificity, the nature of the Student's impairments. The Student's IEPs provide goals and objectives designed to address these deficit areas across all school settings and in a manner that maximizes the Student's exposure to his non-disabled peers. As a matter of form, generally, the operative IEPs contain all of the required elements.

The Parents specifically argue that the Student's goals and objectives, his statements of his present levels of academic and functional performance and the rate of progress identified in the December 18, 2013 and April 24, 2014 IEPs are

²⁴ Because of his age, the Student's IEP does not require a transition plan.

²⁵ Practically, this requires only an analysis of the December 28, 2013 IEP as the April 24, 2014 IEP revision did not make any material changes except to add AT services.

not appropriate. The Hearing Officer agrees and finds ~ especially in the area of social and emotional services, the goal statements are not appropriate.

These IEPs are not robust in the amount or nature of goals and objectives ~ but that is not a criteria under the *IDEA*, which only requires appropriate educational planning, not educational planning designed to maximize potential. *Bd. of Education of the Hendrick Hudson Central School District v. Rowley*, 533 IDELR 656 (1982). Certainly anyone looking at these IEPs after the fact can find areas in which they could be improved; or, areas in which more details or clearer writing would better serve the Student.

But, as they are written, the statements of present levels of academic achievement and functional performance (as well as the goals and objectives) do not pass the basic *Rowley* test, or conform to the *IDEA*. 20 U.S.C. §1414(d)(A)(i)(I)(II) (requiring IEPs to contain “a statement of measurable annual goals, including academic and functional goals designed to 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; and, meet each of the child’s other educational needs that result from child’s disability.”)

That is not to say that the IEPs fail from start to end. The IEPs are appropriate in the following areas:

- They contain lengthy descriptions of both the private and School District evaluation data. (Parents’ ## 39, 49.)
- They contain descriptive present levels of academic achievement and functional performance for each of the goals, whether the specific goal is academic or functional in nature. (*Id.*) The actual

academic goal for reading addresses the type of reading issues identified in his evaluations and is measurable and stated with specificity. (Id.) The same is true for his "independent functioning" goals and his occupational goals. (Id.). A careful reading of these goals and objectives shows that they are designed to meet the Student's needs that result from his XXY and to allow him to be involved in and make progress toward the general education curriculum. For example, the Student's academic achievement scores obtained through Dr. T in 2014 show that he is retaining and progressing in core educational skills learned, at least in part, in the general education setting. (Parents' #57.) Additionally, the Student demonstrated an ability, with support, to score within acceptable ranges on standardized tests, such as the NWEA. (Parents' Addendum.)

- The IEPs contained appropriate goals and objectives for Occupational Therapy.
- They contain all of the required elements of an IEP set forth in 20 U.S.C. §1414(d), even considering that the goal statements did not design an IEP calculated to provide a FAPE to the Student.

Academic Programming.

Academically, the goal statements regarding reading are thin, despite the nearly overwhelming evaluation data, that the Student has significant impairments in his ability to learn new information through reading. (Parents' #33.) The goals do not adequately address, on their face, the need for the Student to increase his fluency or reading comprehension, despite the fact that the Student was primarily receiving his academics in the general education setting, and that he needed to have at least average decoding and comprehension skills to process his instruction.

In addition, the amount of time the Student received special education instruction in reading (and the related service of social work ~ addressed below)

were insufficient on the face of the IEP to deliver a FAPE based on the Student's unique educational needs. In his operative IEPs, the Student is only given 250 min/week of specialized reading instruction. (Parents' ## 38, 49.) The IEPs, as well as the private evaluations by Dr. S and Dr. T state that the Student has deficits in his working memory and attention that impede his ability to learn from reading. (Parents' ##33, 38, 49, 54.) Both Dr. T and Dr. S were clear that their evaluations of the Student showed that he responded to reading instruction that was multi-sensory in nature. (Dr. T and Dr. S.) The Student's special education teacher testified that as part of her specialized reading instruction she utilized a multi-sensory approach, and is trained in the use of Orton-Gillingham. (Ms. C1.) Generally speaking, in multisensory teaching, instructors teach in a manner that necessitates students use visual, auditory, tactile, and kinesthetic modalities to learn, enabling them to rely on their strengths but more importantly, strengthening their weaknesses. (Ms. H Testimony.)

In addition to the 250 minutes of specialized reading instruction at school, the Student received a substantial amount of extracurricular reading instruction through Lindamood-Bell, another multi-sensory approach to reading. (Mother's Testimony.) The Student's operative IEPs appropriately reference the additional Lindamood-Bell reading support the Parents provided to the Student as well as their out-of-pocket supplementation of therapies and evaluations. (Mother's

Testimony; Parents ## 38, 49.)²⁶ In her testimony, the Student's mother explained that the Parents have been heavily augmenting the Student's IEP services with private therapies and private Lindamood-Bell reading instruction. (Mother's Testimony.) From the time the Student has been in 1st grade, he has received Lindamood-Bell reading instruction outside of school, up to over 270 hours of Lindamood-Bell cumulatively since that time. (Mother's Testimony.) The Student's Lindamood-Bell providers conducted their own evaluations and monitored and reported on the Student's progress. (Parents' ## 19, 31, 43, 60.) This private program coexisted in tandem to the School District's reading instruction for the Student, and has been memorialized in the December 18, 2013 IEP. (Parents' #38.) As recently as March 2014, Lindamood-Bell updated a testing summary that stated that the Student had received 42 hours of Lindamood-Bell instruction, and showing reading progress at or near grade level in many subjects. (Parents' #43.)

The record is clear that the Student, due to his XXY, is impaired in his ability to process and learn new academic material through reading, especially in the often distracting and relatively fast-paced general education environment. (Parents' ##33, 38, 49, 57.) In his December 18, 2013 IEP, the Student's IEP Team

²⁶ It is not only appropriate, but required that IEP Teams take note of outside services provided to the Student, especially when considering eligibility. *See, Letter to Lillie/Felton*, 23 IDELR 714 (in which the Office of Special Education Programs stated that "[g]enerally, it would be appropriate for the evaluation team to consider information about outside or extra learning support provided to the child...").

only recommended 250 minutes per week of multisensory reading instruction (split roughly between direct services in the general education setting and in a separate setting). (Parents' #38.) Even with the appropriate accommodations previously noted in the IEP, this amount of specialized reading instruction (just over 4 hours/week) is inadequate when taking into account the extent of the Student's impairment as set forth in the private evaluation reports provided by the Parents, and the evaluation reports provided by the School District as well. (Parents' ##33, 38, 49, 57.)

Despite the levels of reading intervention provided in school *and* by Lindamood-Bell, the Student's performance stayed relatively constant. (See, e.g., Parents' #57.)²⁷ Even when the Student is operating at or near grade-level, he

²⁷ The parties each offered testimony as to more informal work product and report card grades of the Student as a measurement of his exposure to, or lack of exposure to, the general education curriculum. (Mother's Testimony, Ms. C2 Testimony, Ms. C1 Testimony, Ms. J Testimony, Ms. D Testimony.) The Hearing Officer did not find these items as compelling as more formal measures of assessment. However, the informal work product and grade reports were illustrative of the overall positive relationship between the Student and his educators at the School District. At hearing, the Parents took great issue with the quality of Student's work product and his report card and homework grades; arguing that they demonstrated a lack of progress by the Student and willingness by School District staff not to challenge the Student academically, to his detriment. (Mother's Testimony.) The Hearing Officer respectfully disagrees. A careful reading of the Student's evaluations (and especially in light of the testimony by Drs. S and Dr. T of their respective evaluation data) shows that the Student is capable of learning with support; but, that his particularly complex type of XXY will permanently impair his working memory, reading, emotional fragility and social skills for the rest of his life. (Dr. S Testimony, Dr. T Testimony.) The Student's School District educators have clearly internalized this information and have provided the Student ~ through grading and correction of work product and modified report cards ~ humane feedback on the quality of his work. (See, e.g. Parents' Appendix) The School District educators that testified at

still shows marked reading impairment (Id.), not something one would expect from a Student of his intellectual abilities with as much reading support he has had over the last several years. It is clear that the Student's XXY is clearly a chronic and life-long condition that permanently impairs many of the necessary skills necessary for learning (especially learning by reading). (Parents' # 33, Dr. S. Testimony, Dr. T Testimony.) The Student works exceptionally hard just to maintain his relative distance from his same-aged peers in his reading program. The Hearing Officer, after reviewing the evidence, concludes that the combination of the specialized reading instruction he received at school and the supplemental Lindamood-Bell reading intervention he received outside of school at his Parents' expense, is what has enabled this hard-working young man to perform at his present level.²⁸ In order for the Student to receive comparable levels of reading support without the benefit of the outside reading instruction provided by his experience at Lindamood-Bell, the amount of time the Student would need to spend getting specialized and direct reading instruction in school

hearing recognized and clearly respected that the Student has to work much harder than his non-disabled peers, and still may end up accomplishing less. (Ms. C2 Testimony, Ms. C1, Ms. C3 Testimony, Ms. J Testimony, Ms. D Testimony.) Regarding the Student's work samples and report cards, the Hearing Officer finds that the School District's educators appropriately gave the Student largely positive feedback on what he does correctly, without missing natural opportunities to teach him ways to improve. (Parents' Appendix.)

²⁸ In their DPCN the Parents did not make a claim for reimbursement of Lindamood-Bell instruction; and, during the hearing counsel for the Parents was clear that the Parents were not seeking reimbursement. Therefore that relief will not be addressed here, and like the transportation services, is considered waived by the Parents.

would need to be increased substantially, perhaps during all reading-based core curricular classes. Accordingly, the 250 minutes/week of reading instruction currently provided in the Student's IEP does not provide him a FAPE.

The School District did offer testimony (Ms. C1 Testimony) that his special education teacher appropriately used a multi-sensory approach to teaching him during his specialized reading instruction, even if for only 250 min/week. She also testified that she consulted with his general education teachers, and provided specialized reading instruction within the general education program. (Id.) However, as stated above, the amount of time that the Student was receiving a multi-sensory approach to learning at School was mostly limited to his time in specialized reading instruction, and not as part of the core curriculum. (Id.) It is reasonable to conclude that if the Student had not been getting the additional multi-sensory reading instruction outside of his IEP, he would not have been able to perform at his current levels. Even though the current progress reports indicate that he was making progress, the Hearing Officer concludes that the progress was due to the added private reading instruction he was receiving; and, given the evaluation reports and testimony from Dr. S and Dr. T, he would not have made adequate progress without it. (Dr. S Testimony, Dr. T Testimony.) Therefore, as written, the 250 minutes/week of reading instruction provided to the Student in his current IEPs does not provide a FAPE academically.

Social/Emotional/Behavioral Programming.

The Hearing Officer recognizes that, in addition to the Student's pronounced reading issues due to his XXY, he also has social and emotional behaviors that impede his learning. The Student's IEPs and his evaluation reports discuss his emotional immaturity and fragility, as well as his distractibility and impulsiveness. (Parents ## 38, 49.) The Student clearly has struggled to have meaningful peer relationships when he attended school within the School District. (Id., Mother's Testimony.) He has pronounced impairments in completing work assignments on time due, at least in part, on coping with frustration; and, he cannot complete homework assignments without noticeable stress. (District #38, Mother's Testimony.) Both his evaluators and his educators described him as someone with "internalized" anxiety at hearing; and, it is clear that the stressors found in a general education setting can aggravate these underlying social and emotional challenges. (District #38, Dr. S Testimony, Dr. T Testimony, Ms. H Testimony.) His mother gave extensive and credible testimony regarding the Student's negative image of himself as a learner, which she repeatedly reported to his educators privately and at IEP meetings. (Mother's Testimony.)

However, despite the clinical findings of emotional fragility from Dr. S and Dr. T, (and near-constant feedback from his mother that he was extremely anxious about school), the School District educators and his IEP Team demonstrated a contrary approach to his social and emotional planning at

school: the IEP Team accepted and documented that he had levels of anxiety that negatively impacted him at school; while at the same time, individual educators testified that while the Student attended school within the School District, these social and behavioral issues did not dramatically impact his ability to access the general education curriculum. Clearly these two competing images of the Student cannot coexist: either he had sufficient social/emotional impairment in the school setting to be noted in and provided for in his IEP, or he did not. The Hearing Officer concludes that, in fact the Student has dramatically greater impairment in the social/emotional areas than was addressed in his IEP, and that failure of his IEP to address this area of impairment constituted a denial of FAPE to the Student because his IEP was not designed on its fact to meet this unique need.

The December 18, 2013 IEP clearly notes that the Student has anxious responses to the school environment, especially when frustrated and stressed. (Parents #38.) It specifically notes a medical diagnosis of Anxiety Disorder NOS, and restates the Parents' ongoing concerns regarding the Student's emotional fragility. (Id.) The IEP contains accommodations to help the Student with emotional regulation such as "provide motivation and verbal rewards on daily basis." (Id.) Most importantly, the December 18, 2013 IEP contains minimal consultative minutes for the school social worker and the general education teacher in order to allow the Student to address a specific goal in social/emotional skills which states that the Student "will be able to interact

within the classroom setting without excessive, fear, worry or anxiety.” (Id.) The IEP does not provide any direct social work services to the Student to address this, and there is no mention of any social work curriculum being used with the Student to enable him to address this goal.

Complicating the IEPs acknowledgement that the Student has significant enough social and emotional impairments to require at least a goal and minimal social work services is the fact that the Student’s School District educators did not attribute some of the Student’s more internalized behaviors as evidence of his anxiety; but, simply grouped those behaviors with other same-age peers. (Ms. C3 Testimony, Ms. D Testimony.) It appears as though at least some of the Student’s School District educators did not have a grasp on the nature and extent of how his emotional fragility (which they had been informed was a hallmark of XXY and not just particular to the Student ~ *See, Parents’ #33*) to recognize how this impairment would look in a generalized school setting.

To someone as admittedly far-removed from the Student as the Hearing Officer, Dr. S’s report is nevertheless clear that the Student exhibits these characteristic and disabling qualities of emotional fragility common to boys with XXY: panic disorder, generalized anxiety disorder, separation anxiety disorder, social anxiety disorder and significant school avoidance. (*Parents’ #33.*) Dr. S and the Student’s mother also testified that the Student was extremely self-conscious and shy and would not ask for help, even if he was having severe anxiety. (Dr. S. Testimony, Mother’s Testimony.)

The Student's unique social/emotional needs could not be addressed in an IEP that accepted these findings²⁹ and addressed them in his IEP with goal statements and related services (even in inadequate amounts) while being implemented by educators who concluded that if the Student wasn't misbehaving or otherwise drawing attention to himself in class, he wasn't experiencing anxiety at school and only needed extremely minor social work services and supports. By failing to provide direct weekly social work services to the Student and by failing to include goals and objectives designed to not only help the Student regulate his anxiety, but also to identify anxiety and participate in a plan that allowed him to address it in real time with staff, the December 18, 2013 (and April 24, 2014) IEPs were inappropriate in their design and caused a denial of FAPE to the Student.

Ruling on Issues ##3 and 5: In Favor of the Parents.

Issue #4: Whether, for the period of time from May 6, 2013 to the present, the School District appropriately implemented the accommodations and modifications contained in the Student's IEPs which addressed the Student's reading and writing deficits to perform at grade-level; and, if not, was the Student denied a FAPE as a result?

The Parents submit that for the period of time set forth above, the School District denied the Student a FAPE when it allegedly failed to implement the stated accommodations and modifications concerning the Student's reading and

²⁹ There is no evidence that the school-based members of the IEP challenged the evaluation data present in Dr. S's report or sought to do additional evaluations of the Student to compare with Dr. S's data. (Parents' #38.)

writing deficits to perform at grade level, which impaired the Student's ability to access grade-level curriculum in other subjects. The School District submits that for the time period set forth above, the accommodations and modifications contained in the relevant IEPs that concerned the Student's reading and writing deficits were appropriately implemented, and that the Student received a FAPE accordingly.

Apart from the issue of providing the Student with appropriate AT services,³⁰ there was little testimony or evidence at hearing that the School District failed to implement the Student's operative IEPs as they were written. The Parents did secure testimony from School District educators that not all of the Student's stated accommodations were provided consistently. (Ms. C3 Testimony.) However, there was no evidence that any failure to implement the IEP consistently ultimately caused a denial of FAPE to the Student. Most importantly, School District educators testified that the Student received his related services, his direct services in reading instruction, and most of the accommodations listed in his operative IEPs as scheduled. (Ms. C2 Testimony, Ms. C1, Ms. C3 Testimony, Ms. J Testimony, Ms. D Testimony.) Whatever discrepancies were noted in the implementation of the Student's IEP (the use of a scribe, the ability of the general education teacher to check in with the Student as often as required) did not appear to have any lasting impact on the implementation of the IEP, and thus did not deny him a FAPE on that basis. (Ms.

³⁰ Addressed in Issue #2 above.

C2 Testimony, Ms. C1, Ms. C3 Testimony, Ms. J Testimony, Ms. D Testimony.)
See, T.M. v District of Columbia, 64 IDELR 197 (D.C. D.C. 2014) (noting that an IEP was appropriately implemented when the child received a substantial amount of the services listed.)

Ruling on Issue #4: In Favor of the School District.

Issue #6: Whether, for the period of time from May 6, 2013 to the present, the School District appropriately considered the full continuum of placement options, and whether the School District accordingly made an appropriate placement of the Student in the least restrictive environment? If not, was the Student denied a FAPE as a result?

The Parents submit that, for the time period set forth above, the School District denied the Student a FAPE by allegedly failing to consider and then place the Student in a specialized non-public school that provides special education and related services to students with moderate to severe learning disabilities and average to above-average intelligence. The School District submits that for the time period set forth above, it considered the full continuum of placement alternatives, and that it provided the Student with a FAPE in the least restrictive environment.

The evidence at hearing clearly demonstrates that while the School District potentially had a self-contained placement option that would provide special education and related services to Student's with moderate to severe learning disabilities, social and emotional impairments and independent functioning impairments (Dr. L Testimony), this placement option was not

presented to or by the Student's IEP Team in either December 2013 or April 2014. As such, the School District failed to make the full continuum of placement options available for the IEP Team to consider, and accordingly denied the Student a FAPE.

Ms. L, the Executive Director of Specially Designed Instruction testified at length that the School District could provide³¹ the special education and related services outlined in the December 18, 2013 IEP to the Student in a self-contained setting which would give the Student access to his non-disabled peers and which would also contain the following:

- A program housed in a neighborhood school (although not in the Student's neighborhood school) so that the Student could participate with non-disabled students in non-academic ~ and some academic ~ classes and free periods.
- Specialized reading instruction in a multi-sensory classroom³² for a minimum of 45 minutes up to and including a maximum of 2 hours/day.
- Specialized math instruction up to 300 minutes/week.
- Push-in specialized instruction support in Science and Social Studies classes.
- Very small classroom sizes with teacher to student ratios of 10:1 on average.

(Ms. L Testimony.) Ms. L added that this program is only offered at a small number of schools within the School District, and that students are selected by referral from their IEP Teams. (Ms. L Testimony.) Ms. L admitted that at no time

³¹ For the remainder of the 2015-2016 school year.

³² By educators trained in the Orton-Gillingham methodology.

was the Student referred to this program by anyone within the School District. This is certainly consistent with the testimony by the school-based members of the Student's IEP team that they believed the appropriate placement for the Student was within a general education setting with only 250 minutes/week of specialized reading instruction.

Under the IDEA, the Student's IEP team was required to consider multiple placement options before settling on the one set forth in the IEP. *See*, 34 C.F.R. §300.351(a),(b); §300.552. The School District admits that it has a potentially relevant program for the Student's IEP team to consider and that the IEP team did not consider it at either the December 18, 2013 IEP or in April 2014. (Ms. L Testimony.) Interestingly, when the Student's IEP team reconvened in August 2015, after this instant litigation had been started, the team only considered Dr. T's report and the need for additional evaluations. (S.D. #207, et al.) The Hearing Officer cannot make a judgment as to whether or not the program described by Dr. L would provide the Student a FAPE in the LRE, as the IEP team never considered it, or any other more restrictive setting. In light of the totality of the Student's identified educational needs, the failure to consider the type of program identified by Ms. L's testimony constituted a denial of FAPE to the Student, as it significantly impeded the Parents' ability to participate in the decision-making process regarding the provision of a FAPE to the Student.

Ruling on Issue #6: In Favor of the Parents

Issue #7: Whether, for the period of time from May 6, 2013 to the present, the School District's placement at E.H. Sutherland Elementary School provided a FAPE to the Student in the least restrictive environment? If not, does the Student require placement at a non-public school in order to receive a FAPE and were the Parents appropriate in unilaterally placing the Student at Hyde Park Day School for the 2014-2015 school year?

The Parents submit that for the reasons set forth in Issues # 1 through #6 above, the School District denied the Student a FAPE by placing him at [REDACTED] Elementary School for the period of time set forth above. The Parents further submit that the Student requires a non-public, private school setting in order to receive a FAPE in the least restrictive environment, and that [REDACTED] provides the Student with a FAPE in the least restrictive environment.

The School District submits that for the time period set forth above, it provided a FAPE to the Student by placing him at [REDACTED] Elementary School. The School District denies that the Student requires a non-public, private school in order to receive a FAPE, and submits that it was not appropriate for the Parent's to unilaterally place the Student at [REDACTED] for the 2014-2015 school year.

This issue precedes and captures the Parents' claim for relief that they be awarded reimbursement for the educational costs of placing the Student at HPDS for the 2014-2015 and 2015-2016 school years to date; and, their claim for relief that the Hearing Officer designate HPDS as the Student's IEP placement for the remainder of the 2015-2016 school year, including for extended school services.

The School District has consistently denied that reimbursement is warranted, and has vigorously disagreed that the Student's last-agreed upon placement is inappropriate.

The implementing regulations of the IDEA are straightforward:

"If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs."

34 C.F.R. §300.148.

For the reasons set forth in the discussion of Issues #2, 3, 5 and 6 above, the Hearing Officer concludes that the School District did not make a FAPE available to the Student in a timely manner prior to the Parents' unilateral placement at HPDS. Also as stated above, the Hearing Officer has concluded that, in order to receive FAPE, the Student's IEP should have contained significantly greater hours for both specialized instruction in reading and emotional/social support than his operative IEPs. If the program described by Ms. L had been properly considered and/or recommended by the IEP Team (and there had been evidence that the Student was otherwise eligible for that program and could be reasonably expected to make progress there), that type of environment would be a lesser-restrictive (and much more appropriate placement for the Student) than HPDS. An appropriate self-contained learning

program such as described by Ms. L would afford the Student intensive multi-sensory instruction, as well as the opportunity daily to practice and implement the intensive specialized instruction and emotional/social support in a general education setting with his non-disabled peers ~ something he can never receive at HPDS. (Dr. C Testimony.) It is with reluctance that the Hearing Office must consider a private alternative for this particular Student, who ~ despite his marked impairments ~ also shows an ability to participate in a general education setting with his non-disabled peers; and, make appropriate progress with intensive support. In order to determine if reimbursement is an acceptable remedy, the Hearing Officer must determine if HPDS constitutes an appropriate placement for the Student, and whether any limitation on reimbursement exists.

Hyde Park Day School.

Both the Student's teacher at HPDS and its Executive Director testified about the Student's services there. (Dr. C Testimony, Ms. H Testimony.) The Parents also submitted several ILPs from HPDS as evidenced that the educational programming it delivers to the Student is appropriate. (Parents' ##55, 59, 61.)

HPDS provides a program that is, in and of itself, specifically tailored to children, such as the Student, who demonstrate specific learning disabilities but who also have average to above-average intelligence. (Dr. C Testimony.) Specialized multisensory instruction is provided in small classrooms with teacher to Student ratios of no more than 5:1. The campus attended by the

Student is much further than his current school (but may be comparably far to schools within the School District that house the self-contained program described by Ms. L). The staff monitors the Student's progress frequently and reports back to the Parents. (Ms. H. Testimony.) As a program, HPDS is appropriate, although it offers an intensity of services that may be more than the Student actually needs. The Student's mother and his teacher report that the Student has adjusted to the routine there and is making friends. (Mother's Testimony, Ms. H Testimony.) The Student also receives his related services there. (Id.)

It is unclear to the Hearing Officer if the Student's social/emotional needs are being met at the HPDS more vigorously than at the School District: there was no evidence presented that HPDS staff were working on any social/emotional curriculum with the Student, which is something he needs. Certainly the pace of HPDS is less demanding on the Student, and he spends his entire day in the company of students similar to him, which lessens his shyness and anxiety. (Mother's Testimony.) While it is always reassuring to parents and teachers to hear that a Student is happy in a particular school, that happiness is not, in and of itself, evidence that HPDS is in fact providing appropriate social supports.

Dr. S and Dr. T were clear that the Student will experience the effects of his XXY ~ including the effects on his learning, his anxiety and his social relationships ~ for his life. The Student's social/emotional programming must contain as rigorous a component to teach the Student how to live in a world of

people fundamentally different than him. Learning those skills are easily as important as learning good academic skills. Without having the daily experience ~ including the stressors that inevitable come with that experience ~ of applying skills learned in a separate setting in a setting with non-disabled peers, the Student will be at a disadvantage. The Hearing Officer concludes that HPDS provides appropriate academic support and appropriate transitional social/emotional support at this time (even if there are risks that the Student will lose some social/emotional skills when interacting with non-disabled peers in an educational setting). In short, HPDS is appropriate at this time; but, the day may come when its limits on allowing the Student to interact with his non-disabled peers in an educational setting fails to meet his social/emotional needs.

Having found that the HPDS is appropriate, the Hearing Officer must next determine if any limitations on reimbursement exist pursuant to 34 C.F.R. §300.148(d). The only argued limitation on reimbursement was the concern that the Parents did not send their 10-day unilateral placement letter pursuant to the requirements of 34 C.F.R. §300.148(d)(1)(ii). As stated above, the Hearing Officer concludes that the unilateral placement letter was sent at least 10 business days prior to the removal of the Student from the School District. Accordingly, there is no limitation on the Parents' claim for reimbursement.³³

Ruling on Issue #7 : In Favor of the Parents

³³ In light of this remedy, and given that the Parents did not make any specific claim for compensatory damages, the Hearing Officer declines to order any separate compensatory relief for the failure to provide a timely AT evaluation or device.

ORDER

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

1. The School District is to reimburse the Parents for the reasonable educational costs incurred by them in unilateral placing the Student at HPDS for the 2014-2015 school year (including summer services) and the 2015-2016 within thirty (30) days of receiving written proof of the Parents' actual out-of-pocket costs to HPDS.
2. No later than November 2, 2015 the Student's IEP must be amended to change the Student's placement for the remainder of the 2015-2016 school year to HPDS at public expense. The IEP must be amended to include the Student's attendance in summer classes for 2016 only. The IEP must also specifically exclude transportation to and from HPDS as a related service as that related service has been waived by the Parents.
3. The School District must invite at least one representative from HPDS to any IEP meeting to be convened for the Student during the 2015-2016 school year.
4. The School District may begin investigating the process for the Student's matriculation back to the School District during the 2015-

2016 school year. Towards that end, the School District is to make any potential placement options available to the Parents and to HPDS staff for reasonable observation. Similarly, the Parents are ordered to cooperate in whatever measures they have available to allow School District staff to make reasonable observations at HPDS for any/all educational planning purposes.

5. Nothing in this order is to be construed as a delegation of the Student's IEP planning to HPDS staff. To the extent it deems necessary, the Student's IEP team is to continue to meet and make recommendations as to appropriate special education and related services to be contained in the Student's IEP and implemented (along with the HPDS curriculum and program contained in the Student's ILP) during the remainder of the 2015-2016 school year.

In accordance with 105 ILCS 5/14-8.02a(h), within sixty (60) school days of receipt of this Order, the District shall submit proof of compliance to:

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

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

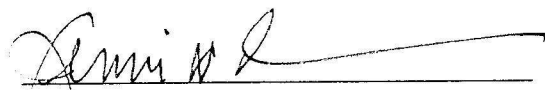
portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

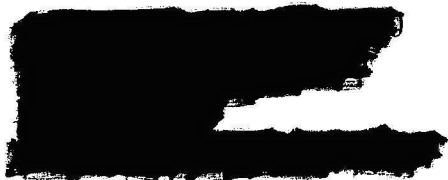
This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy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

IT IS SO ORDERED.

October 8, 2015



Jennifer A. Leisner,
Impartial Due Process Hearing Officer





APPENDIX A

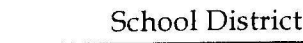
Blake Sloyan v. Chicago Public Schools #299
Case No: 2015-0427

Child	[REDACTED]
Attending School	[REDACTED] (Private)
School Last Attended in School District	[REDACTED]
Child's Parents/Petitioners	[REDACTED]
Witnesses (Proper Name):	Witnesses (Initials for Opinion)
1. [REDACTED]	1. Mother
2. [REDACTED]	2. Ms. P
3. [REDACTED]	3. Ms. C1
4. [REDACTED]	4. Ms. C2
5. [REDACTED]	5. Mr. K
6. [REDACTED]	6. Dr. C
7. [REDACTED]	7. Ms. J
8. [REDACTED]	8. Dr. S
9. [REDACTED]	9. Ms. D
10. [REDACTED]	10. Ms. B
11. [REDACTED]	11. Dr. T
12. [REDACTED]	12. Ms. C3
13. [REDACTED]	13. Ms. S
14. [REDACTED]	14. Ms. G
15. [REDACTED]	15. Ms. L
16. [REDACTED]	16. Ms. F
17. [REDACTED]	17. Dr. C
18. [REDACTED]	18. Ms. H

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

 Student, Case No: 2015-0427

v.  Jennifer A. Leisner,
Impartial Due Process Hearing Officer

 School District

CERTIFICATE OF SERVICE

I, JENNIFER A. LEISNER, certify that on October 8, 2015, copies of the Final Determination and Order were served upon the following persons in the manner indicated:

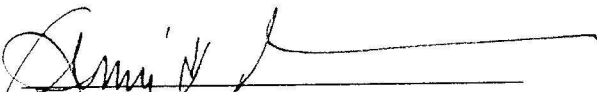
Sent via Email and Certified Mail



Andrew Eulass, ISBE Due Process Coordinator
AEULASS@isbe.net

Wanda Schoneweis
wschonew@isbe.net

Dated: October 8, 2015



Jennifer A. Leisner
Impartial Due Process Hearing Officer



Sent via Email and Certified Mail

