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SPECIAL EDUCATION
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**ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**

STUDENT¹,

Student,

Case No: 2016-0063

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer



School District.

FINAL DETERMINATION AND ORDER

JURISDICTION

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

BACKGROUND

The Student is a 10-year-old, female who is a 5th grade student at a private therapeutic day school. She qualifies for special education services under the disability categories of specific learning disability (SLD) and speech and language impairment (SLI), pursuant to an IEP meeting on September 12, 2013. The Student was found to have educational needs in the areas of: reading, mathematics, writing, and speech. Specifically in language arts, the Student was found to have educational needs in the areas of comprehension, reading fluency, oral expression, phonological awareness, word analysis and vocabulary skills, grammar, spelling, punctuation,

¹ Personal identification information is provided in Appendix A.

capitalization and sentence structure. She has a mild Central Auditory Processing disorder, a Visual Perception disorder, and severe Dyslexia. At the conclusion of third grade, the Student was unable to read and District interventions did not appear to be working. Therefore, the Parents unilaterally placed the Student in a private therapeutic day school where she was able to receive intense Orton-Gillingham instruction. Parents disagreed with the IEPs dated June 20, 2013, September 12, 2013, September 30, 2013, June 6, 2014 and June 16, 2014; maintained that the Student's progress, or lack thereof, was not appropriately considered and IEP goals were not appropriately revised based upon the Student's present levels of performance related to reading, mathematics, speech, and writing; maintained that the District did not appropriately consider the evaluations of its own evaluators in the areas of audiology, speech and language, and psychology in formulating the Student's IEPs, and did not create appropriate goals, and implement those recommendations and goals; and maintained that the Student's placement in a general education classroom with pull out special education services was not the least restrictive environment in which the Student's individual needs could be met and she could make adequate educational progress.

The Parents filed the Due Process Complaint Notice (DPCN) on August 24, 2015. (IHO Exhibit 1.) On September 11, 2015, the District filed its Response to the DPCN. (IHO Exhibit #5.) The parties participated in mediation on September 21, 2015 but were unable to resolve any of the outstanding issues. Based upon this, the 45-Day timeline for this Hearing Officer to render a decision began to run on September 24, 2015 and the initial 45-Day deadline was November 5, 2015. The Parties jointly requested a continuance of the 45-day deadline on October 30th in order to continue settlement discussions and to accommodate scheduling constraints of the Parties and to allow the Due Process Hearing to be scheduled for January 19,

21, and 22, 2016. This Hearing Officer granted the continuance request pursuant to Order entered on November 4th. (IHO Exhibit #7.) Prior to the Due Process Hearing, District counsel and Parents' counsel, respectively, filed Motions in Limine. (IHO Exhibits #13, 16.) This Hearing Officer verbally ruled on both Motions prior to the commencement of the Due Process Hearing and in writing pursuant to Order Ruling on Parties' Motions in Limine dated January 18, 2016. (IHO #18.) The Parties jointly filed a request for continuance of the decision timeline at the conclusion of the Due Process Hearing in order to allow this Hearing Officer ten (10) days in which to render her decision. This was the result of an additional hearing date being added on February 3rd to accommodate additional, essential witness testimony. This Hearing Officer granted the continuance request pursuant to Order entered on February 4th. (IHO Exhibit #21.)

The Parents opted for a closed hearing. The Due Process Hearing was held on January 19, 21, and 22, 2016 and February 3, 2016. [REDACTED] of [REDACTED] represented the Parents. [REDACTED] represented the District. Both parties presented multiple witnesses.² The Parent presented the following Exhibits (PD): Pages # 35-249, 252-305, 329, 332-343, 347-356, 363-388, 397-416, and CV of Dr. O³, which were admitted into evidence. The District presented the following Exhibits (SD): Pages 73, 76-259, 280-302, 337-372, 392, 394-483⁴, which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-21. Both parties submitted oral closing statements and any case law relied upon.

ISSUES

The issues raised by the Parents are as follows:

² Witnesses presented by both parties are identified in Appendix A.

³ Parents' Exhibits were provided in one binder with numbered pages 1-416. Missing page numbers represent Exhibit documents which were not admitted into evidence.

⁴ District Exhibits were provided in one binder with numbered pages 1-483. Missing page numbers represent Exhibit documents which were not admitted into evidence.

(a) Whether, for the 2013-2014 school year, an IEP was created which provided the Student with appropriate academic instruction, including methodologies, meaningful goals, and necessary related services in the areas of language arts, math, speech language therapy, occupational therapy, and assistive technology designed to enable the Student to make educational progress and to provide the Student with FAPE pursuant to 34 C.F.R. §300.320 and Ill. Admin. Code §226.220.

The Parents request that this Hearing Officer determine that, for the 2013-2014 school year, the IEP created did not provided the Student with appropriate academic instruction, including methodologies, meaningful goals, and necessary related services in the areas of language arts, math, speech language therapy, occupational therapy, and assistive technology designed to enable the Student to make educational progress and to provide the Student with FAPE. District maintains that at all relevant times it provided the Student with an appropriate IEP that met her needs and provided her with FAPE.

(b) Whether the District considered the Student's progress, or lack thereof, and appropriately revised the 2013-2014 IEP goals pursuant to 34 C.F.R. §300.324 and Ill. Admin. Code §226.220.

The Parents request that this Hearing Officer determine that the Student's 2013-2014 IEP goals were not revised appropriately given her lack of educational progress therefore denying her FAPE. The District maintains that the Student made significant progress on her IEP goals overall during the 2013-2014 school year therefore provided FAPE.

(c) Whether the District appropriately considered the evaluations of its own evaluators, specifically the District audiologist, psychologist, speech pathologist, and speech language therapist in formulating the 2013-2014 IEP and whether the District implemented the recommendations of those individuals as required by the 2013-2014 IEP pursuant to 34 C.F.R. §300.320 and §300.324, and Ill. Admin. Code §226.220.

The Parents request that this Hearing Officer determine that the District did not appropriately consider the evaluations and recommendations of its own evaluators, specifically the District audiologist, psychologist, speech pathologist, and speech language therapist in formulating the 2013-2014 IEP and did not implement the recommendations of those individuals as required by the 2013-2014 IEP thus denying the Student FAPE. The District maintains that at all relevant times it considered the evaluations and recommendations of its own evaluators, specifically the District audiologist, psychologist, speech pathologist, and speech language therapist in formulating the 2013-2014 IEP and implemented the recommendations of those individuals as required by the 2013-2014 IEP and thus provided the Student with FAPE.

(d) Whether DS2 was the least restrictive environment in which to provide the Student with sufficient specialized academic instruction in order for the Student to make educational progress, including providing the Student with specific services to address dyslexia and speech language impairments, and other related services including speech therapy and occupational therapy.

The Parents request that this Hearing Officer determine that a private therapeutic day school, HPDS, is the least restrictive environment in which to provide the Student with FAPE. The District maintains that DS2 is the least restrictive environment in which to provide the Student with FAPE.

The Parents request the following relief from this Hearing Officer:

- (1) Order the District to reimburse Parents for tuition for ESY for 2013 and tuition reimbursement for the 2014-2015 school year for HPDS;
- (2) Order the District to reimburse Parents for private Wilson tutoring during the 2013-2014 school year, two times per week.

The District maintains that the Parents did not provide the District or DS2 with notice of unilateral placement as required by 34 C.F.R. §300.148(d)(1) and therefore, the request for tuition reimbursement should be denied.

FINDINGS OF FACT

This Hearing Officer did not have the benefit of a transcript with respect to the testimony heard when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes, recording of the hearing, and recollection. This Hearing Officer carefully considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether or not specifically referred to or cited when making her final determination. After considering all the evidence, as well as the arguments of both District counsel and Parents' counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a 10-year old female who is currently a 5th grade student at a private therapeutic day school, TDS. She qualifies for special education services under the disability categories of specific learning disability (SLD) and speech language impairment (SLI). She was initially found eligible for special education services as a 2nd grade student, pursuant to an eligibility meeting on April 5, 2013. (Testimony of Mother; SD 117-125.)
2. At the time of her initial eligibility determination, the Student attended a dual language magnet district school, DS1. (SD 117-125.)

3. The Student attended DS1 for the 2012-2013 school year. She transferred to DS2, her neighborhood school, for the 2013-2014 school year. DS2 was not a dual language school.

(Testimony of CM2⁵.)

4. At the time of the initial referral for special education services, the Assessment Plan reflected the Student's social/emotional status as being a relevant area for assessment. SW⁶ was to obtain data in this area from file review, parent, student and teacher interviews, strength and weaknesses questionnaire for teacher and student. From her interviews with Mother, SW learned that the Student struggled with reading and had been struggling academically since 1st grade. Mother expressed anxiety about the academic expectations of a dual language program as the Student was struggling in her native language of English. She also expressed concern that the Student was easily distracted. GET1 expressed concerns that the Student had difficulty concentrating, was easily distracted, had difficulty with reading and writing, had difficulty applying knowledge, needed more reassurance than other students, and did not like to be singled out during class. (Testimony of SW, GET1⁷; SD 77; PD 262). The Student's off-task behaviors affected her classroom performance. (SD 138.) SW did not provide questionnaires for the teacher and student and did not administer rating scales to formally assess the Student's off-task behaviors, although the Assessment Plan required her to do so. No quantifiable data was collected regarding the distractibility and inattention of the Student. Based upon SW's assessment, the Student was not eligible for social work services and social work goals were not provided in her June 20, 2013 IEP. (Testimony of CM1⁸, SW; SD 77.)

⁵ CM2 is employed by the District as a counselor and case manager. She has worked at DS2 for 6 years.

⁶ SW is employed by the District as a school social worker. She has been employed by the District for 17 years and has worked as a case manager and school social worker.

⁷ GET1 was the Student's 2nd grade teacher at DS2. She has worked at DS2 for 5 years.

⁸ CM1 is employed by the District as a case manager. She has been employed by the District for 6 years as a case manager. She was the Student's case manager when the Student was a 2nd grade Student at DS1.

5. This Hearing Officer finds that SW failed to appropriately evaluate the Student for social work services. Significant evidence exists in the record regarding the Student's pervasive off task behavior and anxiety reported by both Mother and GET1. The Assessment Plan required SW to provide questionnaires/rating scales to the teacher and Student. This was not done.

6. On February 11, 2013, the District Psychologist performed an initial Psychological Evaluation. As part of that evaluation, the Student was administered the Wechsler Individual Achievement Test, Third Edition (WIAT-III). The Student scored in the below average range in the following areas: reading comprehension, word reading, oral reading fluency, oral reading accuracy, oral reading rate, spelling, math composite, math problem solving, math fluency – addition and math fluency – subtraction. The Student was inconsistent with recognizing rhyming words, recognizing initial and ending sounds in words, and matching words with pictures. (SD 79-88.) The Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV) results reflected that the Student has substantial weaknesses in the areas of perceptual organization and visual motor coordination and visual-perceptual discrimination and speed. The Student's significant weaknesses in visual processing impacted her abilities in the areas of reading, writing, composing, and spelling. This is extremely significant in the educational setting as it impacts all areas of academic performance including the Student's ability to discriminate letters and learn early literacy skills, plan math operations, physically write, and organize written words.

(Testimony of Dr. O⁹, NP¹⁰; SD 79-88.)

⁹ Dr. O is licensed Clinical Child Psychologist. He holds a PhD in Clinical Psychology from [REDACTED], a Master of Arts Degree in Clinical Child Psychology from [REDACTED] and a Master of Science Degree in Education from [REDACTED]. He has been licensed to practice since 2001 and he works exclusively with children.

¹⁰ NP is a PhD candidate in Clinical Psychology at the [REDACTED] of Medicine and Science. She holds a Master's Degree in Clinical Psychology from [REDACTED] and a Bachelor of Arts in Psychology from the [REDACTED]. She is a Clinical Fellow at [REDACTED], under the supervision of Dr. [REDACTED]. (PD 406-408.) NP evaluated the Student in July – August 2015.

7. Based upon these weaknesses, the Student required remediation in these areas. Accommodations would not be sufficient to assist the Student in making educational progress. Remediation would take the form of a learning disability specialist to assist with reading and an occupational therapy evaluation, goals, and services. Occupational therapy goals would assist the Student in improving her visual processing while reading, fine motor coordination and letter formation, and sensory issues. (Testimony of NP; SD 465-481.)
8. The District did not evaluate the Student in the area of occupational therapy and no goals or services were provided. (Testimony of NP.)
9. This Hearing Officer finds that, based upon the evidence presented regarding the extent of the Student's weaknesses in the areas of perceptual organization and visual motor coordination and visual-perceptual discrimination and speed, the Student should have been evaluated for occupational therapy services and occupational therapy goals and services should have been provided. This was an area of suspected disability, of which the District was aware, yet the District failed to evaluate.
10. Goals were not created to address the Student's impaired visual perceptual skills although this impairment impacts all areas of academic performance, including literacy skills and writing. The Student's deficits in this area are so significant that accommodations would not have allowed the Student to make academic progress; specific interventions are required. (Testimony of NP; SD 79-88; PD 465-481.)
11. This Hearing Officer finds that the District failed to include IEP goals related to the Student's visual perceptual impairment, although this was an identified area of weakness and need.

12. An initial IEP was developed for the Student pursuant to an IEP meeting on June 20, 2013. Goals were developed in the areas of Language Arts/English/Reading, Mathematics, Speech/Language and Writing. (SD 126-152.)

13. At the time the June 20, 2013 IEP goals in the areas of Language Arts/English/Reading were created the Student had been receiving Tier III Response to Intervention (RtI) services. However, the RtI data was not shared with the IEP team. (Testimony of SET1¹¹; GET1.)

14. The Student's June 20, 2013 reading goal was as follows: Currently, Student can read 54 words per minute (WPM) in a 1st grade text with 91% accuracy. By June 2014, the Student will be reading 55 WPM with a 2nd grade text at 75% accuracy in 4 out of 5 attempts. Quarterly benchmarks were set for November 2013, February 2014, and April 2014. The Student's performance was to be evaluated pursuant to a data chart and progress was to be determined quarterly. This goal was based on the Student's "very good ability to listen for information and to express herself orally." (Testimony of SET1; SD 138-139.)

15. The Student's Oral and Written Language Scales (OWLS) reveal that her scaled score for Listening Comprehension was 74, which is in the 4th percentile. Her scaled score for Oral Expression was 79, which is in the 8th percentile. These results are 1.7 standard deviations below the mean. (Testimony of SET1; SG.)

16. The required data chart to determine the Student's progress was not maintained. (Testimony of SET1.)

17. With respect to a reading fluency goal, 98% accuracy or above is considered mastery; below 90% accuracy is considered struggling; and, 80% is considered a frustration level. (Testimony of SET1, SET2¹², SG, NP.)

¹¹ SET1 is a special education teacher at DS1. She has been a special education teacher for 12 years. She holds a Bachelor of Arts and Master's Degree in Special Education from [REDACTED]

18. This Hearing Officer finds that based upon the testimony and documentary evidence presented, the Student's above Language Arts/English/Reading goal does not appropriately consider the Student's present levels of performance. The basis for the Student's goal, "her very good ability to listen for information and express herself orally" is contradicted by articulated concerns in the IEP regarding the Student's abilities and the OWLS which show her performance in these areas to be poor at 1.7 standard deviations below the mean. In addition, the 75% accuracy level is a frustration level, not the level at which the Student is making progress and mastering the skill. It is further found that the data to be collected with respect to this goal, the data chart, was not maintained.

19. The Student's June 20, 2013 math goal was as follows: "the Student, when presented with a variety of math situations (computational and word) will identify the whole numbers and compare them using the symbols $<$, $>$, or $=$ and the words such as 'mas', 'igualdad' or 'menos', applying counting, grouping and place value concepts of triple digits. 4 out of 5 trials." (SD 140.) The Student's present level of performance regarding her ability to identify and use symbols, identify whole numbers, and understand the meaning of the Spanish words listed is not present in the IEP. (Testimony of SET1, SET2; SD 140-141.)

20. This Hearing Officer finds that based upon the testimony and documentary evidence introduced at hearing that the above math goal does not consider the Student's present levels of performance. Further, the Student's progress, or lack thereof, is impossible to determine, as the present levels were not reflected in the IEP.

21. The Student's June 20, 2013 writing goal was as follows: "To increase writing skills, Student will apply the use of graphic organizers, word check programs and reference guides to

¹² SET2 is a special education teacher at DS2. She has been employed by the District for 17 years as a special education teacher.

write for a specific purpose (descriptive, fiction, etc.) 2-3 paragraphs consisting of 4-5 sentences composed with clarity and demonstrating sentence conventionalities (i.e. capital letter, periods, etc.) that include 2 or more details that support her position or the author's position." (SD 144-145.)

22. The Student's present levels of performance with regard to the writing goal reflect that she could write "short paragraphs and mini essays." (SD 144-145.) However, the Student had great difficulty with spelling and was near the bottom of the class in this area. GET1 functioned as a scribe for the Student because the Student could not keep her place in a story and write conventionally. The Student had illegible writing, difficulty spelling and organizing and following writing conventions such as capitalization and punctuation. In fact, the Student was unable to write short paragraphs and mini essays and her writing goal was not realistic based upon her ability level at the time the goal was created. (Testimony of GET1; SET2.) The benchmarks for the writing goal do not reflect to what percentage correct the Student had to perform the benchmark. Therefore, the goal and benchmarks do not reflect what the Student could do correctly and it is impossible to tell if the Student was progressing toward the goal. (Testimony of SET2.) In addition, the District Psychologist recommended daily opportunities to write. (SD 88.) However, the goal and benchmarks do not provide for daily writing opportunities and the Student's progress was to be tracked quarterly. (Testimony of CM1; SD 144-145.)

23. This Hearing Officer finds that the above writing goal did not appropriately consider the Student's present levels of performance at the time the goal was written. The Student's present levels of performance, as articulated in the IEP document, are contrary to the overwhelming testimony of the witnesses who provided educational instruction and services to this Student.

GET1 and SET2 testified that this goal is unrealistic for this Student based upon her ability levels at the time it was created. The testimony of GET1 and SET2 is found to be credible and persuasive. Furthermore, the benchmarks provided do not require an assessment of what the Student's abilities are, making it impossible to track the Student's progress, or lack thereof.

24. The Student had an additional June 20, 2013 reading goal as follows: "When given a narrative passage at an instructional reading level Student will read the passage out loud and answer questions through a variety of prompts on literal comprehension with 75% accuracy. Looking back to the passage as needed to answer the questions in 4 out of 6 attempts." (SD 146-147.) At the time of this goal's creation, the Student had 18% accuracy on literal comprehension questions. The expectation was that the Student would progress from 18% accuracy to 75% accuracy within one year. This was not a realistic goal for the Student but it was not corrected. (Testimony of SET2.) The benchmark criteria for this goal was 75% accuracy in 4 out of 6 attempts which was a double criterion, making progress difficult to monitor. (Testimony of SET1.)

25. This Hearing Officer finds that the June 20, 2013 reading goal above did not appropriately consider the Student's present level of performance as the disparity between the present performance and the performance required by the goal is so great as to make the goal unrealistic. In addition, the benchmark criteria make the Student's progress difficult, if not impossible to monitor. The testimony of SET2 is found to be credible and persuasive.

26. The June 20, 2013 IEP reflected that assistive technology was required for the student to access the curriculum. The AT devices that the Student could use were listed as adaptive writing utensils, highlighters, tape records/CD/digital recorder, calculator, books on tape/CD, classroom

computer. (SD 131.) The Student did not receive any of the listed AT devices and an AT evaluation was never conducted. (Testimony of Mother, SG, GET1, CM1.)

27. This Hearing Officer finds that the Student was not provided with the assistive technology services and supports listed in the IEP. Further, the Student did not receive an AT evaluation.

28. By 2nd grade, a student should have sound phonemic awareness. (Testimony of GET1.) The Student had poor phonemic awareness and required small group reading instruction using materials at her level. (SD 79-88.) However, no phonemic awareness goal was created and the Student did not receive small group reading instruction in phonemic awareness due to SET1's large student case-load. (Testimony of SET1.)

29. The Student had poor spelling, poor encoding and decoding skills, problems with consonants, long and short vowels, and common suffixes and difficulties with grammar and vocabulary. (SD 87, 127-129.) Goals could have been set to address spelling, grammar, vocabulary, encoding and decoding skills, consonants, long and short vowels and suffixes. However, goals were not created to address these identified needs. (Testimony of SET1, GET1, SET2.)

30. During her 2nd and 3rd grade school years, the Student experienced anxiety and was frequently noted to be off-task and easily distractible. Mother reported concerns with the Student's distractibility and difficulty with concentration. (SD 94.) SET1 believed that the Student's off task behavior was due to her learning disability and the fact she struggled in the classroom. She also believed the Student needed more organization. SET1 did not believe that a goal was necessary to address off task behavior, as the Student would have small group direct

instruction. However, the Student never received this small group direct instruction. (Testimony of SET1.)

31. In 2nd grade, the Student was quite distracted and day dreamed frequently. Her distractibility was interfering with her ability to progress as a student. The Student was very aware of others and was very unsure of whether or not she was doing things correctly. She was unsure of herself than the average student. However, no data was collected with regard to this issue and no goals were written to address this. (Testimony of GET1.)

32. In 3rd grade, the Student had a very difficult time focusing and was very conscious of her disability. The Student was aware that she was unable to read and it was very stressful for her. (Testimony of GET2.) She was unable to write to the same extent as her peers and was anxious about it. (Testimony of SET2.) The Student felt lost, experienced trepidation with tasks, struggled with classwork in reading and math. She was off task, distractible, and experienced anxiety in the general education classroom consistently. The Student spent the majority of her day in the general education classroom. (Testimony of GET2, SET2.) In the general education classroom, she was provided with accommodations including, preferential seating close to the teacher, movement breaks, an opportunity to walk around the hall with a friend, an assigned reading partner, one-on-one instruction with the general education teacher, modified homework. (Testimony of GET2.) No data was collected regarding the Student's off task behavior and no goals were written to address this issue. (Testimony of SW, GET2, SET2.)

33. This Hearing Officer finds that there was ample, on-going evidence of the Student's distractibility, anxiety, and off task behavior. However, no data was collected and no evaluation was performed to address this issue. Likewise, no goals were set to remediate this issue.

34. On March 15, 2013, the Student received a Central Auditory Processing (CAP) Evaluation. AUD¹³ found the Student to have below average performance on degraded speech and dichotic listening tasks, which demonstrated a CAP dysfunction in the area of Auditory Decoding. Due to the fact that the Student was able to complete most of the degraded speech dichotic listening tasks, the CAP disorder was considered to be mild, although the deficit in the Student's right ear is significant. (Testimony of AUD; PD 246-249.)

35. The Student's CAP deficit means that she is at risk for mishearing phonemes which can affect reading, writing, spelling and comprehension. As the Student was experiencing substantial difficulty with reading, both remediation and accommodations were recommended. (Testimony of AUD; PD 249.) AUD recommended the use of Earobics and HearBuilder for remediation. Earobics is an effective program that assists with auditory discrimination decoding skills. (Testimony of AUD; PD 249.) AUD did not know that the Student also had visual processing issues. The two primary channels for literacy are auditory and visual. When a student has multiple impairments, it can impact a child's education and both visual and auditory deficits need to be addressed. (Testimony of AUD.)

36. The Student did not receive Earobics or HearBuilder. She did not receive any remediation for her CAP deficit. (Testimony of AUD, GET1, SET1, SET2.)

37. This Hearing Officer finds that the recommendations of the District's own CAP evaluator were not followed and implemented, as the Student did not received any remediation, support, or services to address her auditory processing deficit, which was an identified area of educational need for this Student.

¹³ AUD is an Illinois licensed audiologist with a certificate of clinical competence. She holds a Bachelor's Degree in Speech Language and a Master's Degree and PhD in audiology. She is credentialed to perform Central Auditory Processing (CAP) evaluations. She has been employed by the District for 30 years and has been conducting CAP evaluations for 25 years.

38. SLP1¹⁴ evaluated the Student for Speech Language services on April 2, 2013. She administered the Photo Articulation Test (PAT-3), Peabody Picture Vocabulary Test (PPVT-III) and the Oral Written Language Scales (OWLS), First Edition. SLP1 administered the PPVT-III, although a 4th Edition had been released in 2007. She also administered the 1st Edition of the OWLS, although that test went out of date in 2011. SLP1 did not administer the written portion of the OWLS although she was a member of the IEP team and written expression was listed as an area of concern in the Eligibility Determination documents. (Testimony of SLP1; SD 95-111.) The Student was found to have difficulty with listening comprehension. She had a scaled score of 74 on the Listening Comprehension section of the OWLS, which was in the 4th percentile. The Student was also found to have difficulty with oral expression and had grammar errors that brought down her score. She had a scaled score of 79 on the Oral Expression section of the OWLS which was in the 8th percentile. The Student's OWLS scores in these areas reflected a significant level of need. (Testimony of SLP1; SD 110.)

39. SLP1 was present at the Student's June 2013 IEP meeting. She wrote one Speech Language goal for the Student, which addressed speech production of the "r" sound in the initial, final, and remedial positions. (Testimony of SLP1; SD 109-111.) SLPs can work with Students on grammar, word meaning, vocabulary, spelling, and following directions. This is within the role of an SLP. (Testimony of SLP1, SLP2.) SLP1 did not write goals for the Student in these additional areas, although there was an identified need, because she believed that the special education teacher would work on whatever other language goals the Student had. (Testimony of SLP1.)

¹⁴ SLP1 was a speech language pathologist employed by the District for 18 years. She is now retired. She worked with the Student at DS2.

40. SLP2¹⁵ was the Student's speech language pathologist at DS2 for the Student's 3rd grade, 2013-2014 school year. She did not consider writing new goals to address the Student's language concerns. The Student's IEP Speech Language goal was: "Student will be able to shift production of the 'R' sound in all positions of words." The first benchmark is for the Student to produce a more correct "R" in the initial position of words with maximum support in 4 out of 5 tries. The second benchmark is for the Student to produce a more correct "R" in the final position of words in 4 out of 5 tries. The third benchmark is for the Student to produce a more correct "R" in the medial position of words with maximum support in 4 out of 5 tries. Pursuant to her IEP dated September 30, 2013, the Student was to receive 30 minutes per week of direct speech language instruction in a separate class. (Testimony of SLP2; PD 152-179, 167-168.)

41. The Student's IEP Report Card reflected that in February 2014, the Student was making expected progress toward her benchmark of "R" in the final position. In April 2014, the Student was making expected progress toward her benchmark of "R" in the medial position. (PD 274-275.) SLP2 did not reflect whether the Student was able to meet these benchmarks within 4 out of 5 attempts as required by the goal. (Testimony of SLP2.)

42. At the time SLP2 was providing services to the Student, she had a caseload of 80 students. The maximum caseload allowed by the State of Illinois was 60 students. (Testimony of SLP2.)

43. SLP2 recorded the services she delivered to the Student on a weekly basis on the District's computerized service log. Pursuant to that service log, during the period September 3, 2013 through June 9, 2014, the 2013-2014 school year, SLP2 provided the Student with a cumulative total of 500 minutes of direct speech language instruction for an average of 12

¹⁵ SLP2 is a speech language pathologist employed by the District. She has been so employed for 16 years. She holds a Bachelor's Degree in special education from [REDACTED] and a Master's Degree in speech language from [REDACTED].

minutes of speech language services per week. The Student's IEP required 30 minutes per week of instruction. The service log further reflects that on all but two occasions, SLP2 worked with the Student on "R" in the initial position. On the other two occasions, SLP2 worked with the Student on "R" in the final position.

44. This Hearing Officer finds that the Student was not provided with the 30 minutes per week of speech language services during the 2013-2014 school year which were required by her June 20, September 13, and September 30, 2013 IEPs. It is further found that, although the IEP report cards for 2013-2014 reflect that the Student was making expected progress toward her speech language goal, this was not the case. The testimony and documentary evidence presented reflect that SLP2 only worked with the Student on "R" in the final position on two occasions and did not work with the Student on "R" in the medial position at all. Further SLP2 did not record the whether the Student met these benchmarks in 4 out of 5 trials as required by the IEP goals.

45. This Hearing Officer further finds that the Student had identified speech language needs in the areas of grammar, word meaning, vocabulary, spelling, and following directions. SLP1 and SLP2 could have provided IEP goals and services to the Student to address these needs but did not do so.

46. Pursuant to the 2013-2014 IEPs, the Student was to receive accommodations in the form of books on tape and use of technology in language arts and reading. She was to receive the accommodation of use of a calculator for math. (SD 189.) No evidence was presented to support the contention that the Student actually received any of these accommodations.

(Testimony of Mother, SG, GET1.)

47. Mother had a continuous dialog with GET1, GET2, SET1, SET2 and the Assistant Principal at DS2 regarding the Student's on-going academic struggles and anxiety. All of the

Student's teachers struggled with the Student and her reading abilities. The Student received tutoring services outside of school since kindergarten.¹⁶ However, in June 2013, Mother engaged a different kind of tutor, SG¹⁷. SG was engaged to tutor the Student one hour per day, two times per week from June 2013 – June 2014. SG also assisted Mother and Father as an advocate for the IEP process. (Testimony of Mother, SG.)

48. Mother engaged SG when the Student was in 3rd grade. Mother and Father were concerned that the Student was not reading, was not making academic progress, and was not able to participate in the school curriculum. SG used the SLANT System to tutor the Student in reading. SLANT is a structured, multi-sensory, stroke and sequence program. It provides direct, specific scope and sequence instruction and provides time for the Student to master specific skills. Based upon the Student's disabilities, she requires scope and sequence instruction. The Student needs to break down words as she sees them, processing them from beginning to end. She also needs to access the information from multiple channels due to her visual perception and auditory processing impairments. Based upon her interaction with the Student twice per week, for one year, the Student needed more intensity than she could provide. The Student needed more opportunity to read the types of texts she was able to read, and practice those skills repetitively. (Testimony of SG, NP, MM.)

49. SG attended the initial eligibility and IEP meeting for the Student with Mother. This was Mother's first experience with the eligibility and IEP process. After the meeting, SG and Mother drafted a parental input document and requested that DS1 include it with the Student's IEP. The parental input document reflected deficiencies in the proposed IEP, including concerns regarding lack of present levels of performance, concerns that Assistive Technology accommodations were

¹⁶ The tutoring services were obtained and paid for by Mother and Father.

¹⁷ SG is a tutor in private practice. She was a High School English teacher. She previously worked for Lindamood Bell. She is certified to instruct in the SLANT System. She is also trained in Wilson but not certified in Wilson.

agreed to be provided, however the box was checked “No” on the IEP document, and concerns that evaluation criteria and procedures were missing. In addition, Mother did not receive a copy of the Procedural Safeguards. (Testimony of SG, Mother; PD 297-300.)

50. Mother discussed the work that SG was doing with the Student with DS2’s Assistance Principal, GET2, and SET2. Mother arranged with the Assistant Principal to pull the Student out of school for two hours each week, at the end of the school day for tutoring. Mother did not want to extend the Student’s school day by an additional hour twice per week for tutoring due to the fact that school was very difficult and a struggle for the Student. DS2’s Assistant Principal, GET2 and SET2 all agreed that tutoring with SG was a positive and were very supportive of this request. (Testimony of Mother, SG.)

51. During her time as tutor, SG had an on-going dialog with SET2. She spoke with SET2 five to six times during the school year. She shared information about her work with the Student and obtained information about what SET2 was providing. SET2 did not have a structured phonics program available to her or decodeable¹⁸ books. The Student needed both of these in order to access the curriculum. The Student was unable to read at school during silent reading time as there were no books that she was able to access with her disability. SG offered to, and did, provide SLANT materials that the Student could take back and forth to school so she had something to read at school during silent reading time. SG also provided a binder for notes so SET2 could record materials she used. SET2 rarely used the materials.

52. SG also provided a phonics-based, structured workbook for the Student to use at school. SG lent Earobics software to SET2. Earobics is a software program that targets phonics. This program was recommended by AUD. Earobics generates data. SG did not receive any data from

¹⁸ At one point during the school year, SET2 found 20 decodeable books from the Storytown series. Those were the only decodeable books available.

the Student's use of the program. SET2 tried the program a couple of times but was unable to implement it. (Testimony of SG, SET2.)

53. SG observed the Student at school in the second half of the 2013-2014 school year due to concerns that the Student was not involved and was not part of the classroom. She observed the Student to be separate and apart from other students, not involved. SG also provided a scope and sequence phonics based workbook to the Student for use at school. The Student used it the day SG observed but she did not see any other evidence of use of the workbook and did not know how often it was used. (Testimony of SG.)

54. SG and Mother met with the 4th grade special education teacher, in preparation for the Student's transition to 4th grade. They wanted to understand how the class worked and what resources were available to the Student. Hooked on Phonics was the phonics program that would be used for the Student in 4th grade. Hooked on Phonics is not recommended for use with students with learning disabilities. The International Reading Association determined it to be ineffective and inappropriate for students with dyslexia and learning disabilities. SG believed that the 4th grade program offered to the Student at DS2 did not have the requisite intensity to meet her needs. SG and Mother were concerned that the gap between the Student and her peers was widening. (Testimony of SG, Mother.)

55. Mother and Father paid SG \$5,454.62 for tutoring during the period June 2013 – June 2014. (Testimony of Mother; PD 373-384.)

56. The Student's March 2014 ISAT scores reflect a scaled score in Reading of 134 and an indication of academic warning. On the writing extended response section, the Student had one correct answer. On the NWEA dated February 7, 2014, the Student's RIT level is low in all categories in both reading and math. On the NWEA dated June 23, 2014, the Student's RIT

level is low in all categories in reading and math with the exception of geometry which is low average. (Testimony of SET2; SD 281-282.) The Student's Lexile level at the end of 3rd grade was D which indicated that she was at an early 1st grade level. (Testimony of SET2; PD 409.) The Student did not make academic progress in reading, writing, and math during her 3rd grade school year. (Testimony of SET2, GET2, Mother, SG; SD 288, 293, 295-296, 298, 300, 337, 347-362.)

57. The Student failed 3rd grade and did not matriculate to 4th grade. She was assigned to a different 3rd grade classroom at DS2 for the 2014-2015 school year. (Testimony of GET2, Mother.)

58. Mother had an on-going dialog with DS2's Assistant Principal during the 2013-2014 school year regarding the Student's anxiety about attending school. The Student developed separation anxiety from Mother. When they arrived at the backdoor of the school, the Student would clutch Mother and not let her go. The Student cried frequently when she had to go to school. (Testimony of Mother.)

59. At the time of the June 6, 2014 IEP meeting, DS2's Assistant Principal, SET2, GET2 and the IEP team knew that Mother and Father were going to remove the Student from the District if they were able to obtain financial aid from TDS. Mother told DS2's Assistant Principal in a telephone conversation prior to the IEP meeting. (Testimony of Mother.)

60. The June 6, 2014 IEP did not contain spelling or reading comprehension goals although those were identified areas of need for the Student. (SD 212.)

61. The June 6, 2014 IEP reflected an English/Language Arts/Reading goal as follows:
"Student will use word analysis strategies to read multi-syllable words, in context or in isolation with 80% accuracy or better. She will read 80 or more words per minute on CBM 3rd grade

passages.” (SD 222.) The IEP reflects that the Student is able to sound out single syllable consonant-vowel-consonant words. Her present levels of performance illustrate the following: “the Student is able to read 44 words per minute at a 2nd grade level” (SD 212) and “the Student is able to read 67 words per minute at a 2nd grade level.” (SD 222.) The IEP does not reflect the Student’s accuracy rate. The Student’s present levels of performance are unclear, do not relate to the goal, and do not provide a basis upon which to measure the Student’s progress. (Testimony of SET2.)

62. The June 6, 2014 IEP reflects that the Student has difficulty sounding out long vowel sound words and vowel diphthong syllables. (SD 222.) There is no IEP goal created to address this need. (Testimony of SET2.)

63. The June 6, 2014 IEP reflects that the Student requires intensive phonics instruction. (SD 212.)

64. The June 6, 2014 IEP reflects a math goal as follows: “Using math manipulatives, charts, graphs and anchor charts, Student will be able to read, solve and explain orally and in writing the steps to solve a math word problem that requires addition, subtraction, multiplication or division as well as incorporating money concepts with 80% accuracy.” (SD 224.) The Student’s present level of performance with regard to this goal is not present. (Testimony of SET2.) The IEP further reflects that the Student is able to add and subtract simple digits. (SD 224.) She is unable to multiply single digit numbers from multiples of 1 to 5. (SD 212.)

65. The Student struggles with word problems in math. (Testimony of GET1.) The June 6, 2014 IEP does not contain a math goal as it relates to word problems.

66. The June 6, 2014 IEP contains a writing goal: “The Student will be able to summarize a given text using word banks, assistive technology or graphic organizers, which convey a clear

understanding and interpretation of ideas and information, and demonstrate focus and writing conventions with 80% accuracy in 4 out of 5 attempts.” (SD 226.) This goal does not reflect the Student’s present level of performance as it relates to the goal. It is unclear what 80% accuracy in 4 out of 5 attempts would look like. (Testimony of SET2.)

67. Based upon the testimony and documentary evidence presented, this Hearing Officer finds that the June 6, 2014 IEP reading, writing, and math goals do not reflect the Student’s present levels of performance and are not designed to adequately measure progress. IEP goals are missing in the identified areas of need of reading comprehension, math word problems, spelling, long vowel sounds and vowel diphthongs. The District recognizes the Student’s need for intensive phonics instruction. However, the only method of providing such was Hooked on Phonics which is not recommended and not effective for students with learning disabilities. (FF #51.)

68. Mother did not receive the Procedural Safeguards at any of the IEP meetings she attended. (Testimony of Mother.) CM3 was the case manager responsible for providing Mother with the Procedural Safeguards for the June 16, 2014 IEP meeting. CM3 had no independent recollection of providing this document to Mother or of explaining the contents of the document to her. The IEP document references Parents’ signature on a document evidencing receipt of the Procedural Safeguards. However, not such document was introduced into evidence and CM3 acknowledged that said document was not attached to the IEP. (Testimony of Mother, CM3, SD 211-259.)

69. This Hearing Officer finds neither Mother nor Father were provided with the Procedural Safeguards document at any of the IEP meetings held during the time in question. (FF #45, 64.)

70. Dr. O evaluated the Student in July-August 2015. The Student has significant specific learning disorders, which have been present since her educational history began. She has visual, auditory, and phonological processing issues. These cognitive weaknesses significantly affect her reading, writing and math skills. She also has clinically significant anxiety symptoms with regard to separation anxiety. Her anxiety is school related and her struggles with school exacerbate her anxiety. Dr. O reviewed the Student's 2013-2014 and 2014-2015 IEPs. He was unable to determine what methodology was used to meet the Student's substantial deficits. Methodology is important because it is important to understand which interventions are targeting which Student needs. (Testimony of Dr. O; SD 465-481.) The Wilson language system is recommended for this Student based upon the Student's pattern of deficiency. Dr. O is very familiar with Wilson and its implementation. This program is recommended for this Student based upon the research regarding students similar to the Student, as it is proven to work for students with the same pattern of deficiency as this Student. (Testimony of Dr. O.)

71. TDS is an appropriate placement for this Student. Its educational program is designed to address the Student's unique needs, the methodology used targets her deficits, and supports are integrated from teacher to teacher and from class to class throughout the day. This Student requires the intensity of instruction provided at TDS due to her unique educational needs, as she needs intense instruction which targets her cognitive weaknesses. The Student needs interventions that are proven to be effective for her unique needs, provided in a systematic, intense way with continuous practice and feedback. Dr. O is intimately familiar with TDS' program and this program meets the Student's unique needs. Dr. O is very familiar with the District. District schools are unable to provide sufficient intensity for this Student. Based upon

Dr. O's review of the District's progress monitoring data, the Student was not making academic progress while at DS1 and DS2. (Testimony of Dr. O.)

72. TDS serves students with average to superior intelligence and diagnosed learning disabilities. The Student attended summer school at TDS during the summers of 2013 and 2014. In June 2013, the Student was reading at a rudimentary stage. The Student was only able to read 5% of real words on TDS' assessment. During summer 2014, the Student was only able to decode 13% of real words and 6% of nonsense words. The Student's abilities had improved by Spring 2015. She was able to read higher levels of real and nonsense words, she was able to read in context and was able to read independently at the 2nd grade level and at the 4th grade level at the end of the year. In the Fall of 2014, the Student could read 47 words per minute with 59% accuracy. In Spring 2015, she could read 74 words per minute with 95% accuracy. The Student has made academic progress at TDS based upon the formal assessment records, classroom observations, and the Student's abilities to more frequently apply learned strategies independently. (Testimony of MM¹⁹.)

73. The Student requires multisensory instruction, delivered through every modality, due to her specific learning disabilities, as well as constant review and repetition. The Student has difficulty retaining information and needs constant review and repetition. (Testimony of MM, NP, Dr. O.)

74. TDS uses a multisensory reading program so students obtain information visually, auditorily, and kinesthetically through all senses. TDS uses formal Wilson, Orton Gilligam based assessments to track student progress in the multisensory reading program. The Student has challenges in multiple processing areas. She cannot hear differences within short vowel sounds, has visual, perceptual, and processing issues, and is not always able to obtain

¹⁹ MM is the Principal of TDS.

information from a written page. She needs tactile components to feel and obtain information. At TDS, the Student receives Wilson reading instruction, speech language, occupational therapy and social work services. She receives occupational therapy twice per week. There is a 30 minute classroom component and 30 minute individual instruction for handwriting and self-regulation. The occupational therapy addresses her visual spacial, visual motor, and self-regulation issues, and hand writing weakness. She receives 30 minutes per week in individual social work services and one hour of classroom social work services to address her social emotional issues to ensure that she is available for learning. She receives speech language services twice per week. These are pull out services which target auditory processing, expressive language, organizational skills, visualizing and verbalizing in reading. The Wilson reading skills are integrated throughout her school day in every class and she constantly receives corrective feedback from adults throughout her day. The Student also has accommodations: manipulatives, fidgets, movement breaks, a band on her chair that offers resistance which she can push against, a tracker to prevent her from skipping lines on a page while reading.

(Testimony of MM.)

75. TDS does not utilize the Wilson system with fidelity. The Wilson program was designed for adults not children. TDS implements the Wilson system to address the needs of the individual student. Wilson requires mastery of one step before going to the next step. The Student is only exposed to one new Wilson step at a time. However, when mastery has been achieved at a prior level that prior level is reviewed while the student moves forward to a new level. TDS maintains the sequence of Wilson but reinforces prior steps. The Student is making academic progress at TDS using the Wilson system. Her encoding and decoding skills have improved per quantitative assessment data collected. (Testimony of MM, PD 104-106M.)

76. Since her enrollment in TDS, the Student is able to read signs and text messages. She is able to complete homework independently. She is more confident in her skills and abilities.

(Testimony of Mother, MM.)

77. This Hearing Officer finds that TDS's educational program targets this Student's unique deficits and educational needs. While the District alleged that TDS's lack of fidelity in implementing the Wilson language program makes the placement inappropriate, this Hearing Officer's finding is to the contrary. TDS crafts the Wilson system to meet the unique educational needs of its students, including this Student. The Student receives services in the areas of occupational therapy, social work, speech language, and assistive technology that meet her identified needs. The Student is making academic progress in this placement.

78. Mother and Father applied for a scholarship for the Student to attend TDS. The cost of tuition for the Summer 2014 and the 2014-2015 school year, net of scholarship funds received, was \$19,430.00. The 2014-2015 school year tuition was less than half TDS's stated cost after scholarship funds were applied. Mother and Father paid this amount to TDS. (Testimony of Mother; PD 366-367.)

CONCLUSIONS OF LAW

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

The Parents request relief in the form of tuition and tutoring reimbursement. IDEA provides as follows:

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 . . . 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 has not made a free appropriate public education (FAPE) available to the child in a timely manner and that the private placement is appropriate. 34 C.F.R. §300.148(c); *Burlington v. Department of Education of Massachusetts*, 471 U.S. 359 (1985); *Florence County School District Four v. Carter*, 510 U.S. 7 (1993).

In applying what has come to be known as the three-prong *Burlington-Carter* standard, “equitable considerations are relevant in fashioning relief and the courts enjoy ‘broad discretion’ in so doing.” *Burlington* at 374, 369. “Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required.” *Carter* at 16.

Free Appropriate Public Education (FAPE)

The first prong of *Burlington-Carter* requires that the hearing officer must determine whether a free and appropriate public education was made available to the child in a timely manner. 34 C.F.R. §300.148(c); *Burlington* at 359; *Carter* at 7. The Individuals with Disabilities Education Act (“IDEA”) guarantees children with disabilities the right to a free, appropriate, public education (“FAPE”). 20 U.S.C. §1412(a)(1). In order to determine whether a school district has provided a FAPE requires the determination of whether the school district: (1) complied with the procedural requirement(s) of IDEA, and (2) developed an Individualized Education Program (“IEP”) that is “reasonably calculated to enable the child to received educational benefits.” *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982).

While not specifically alleged in the due process complaint filed by the Parents, evidence and testimony was presented regarding a procedural violation of the Student’s IEP. The alleged violation is that Parents did not receive the Procedural Safeguards document required pursuant to §34 C.F.R. 300.121. Based upon the testimony and documentary evidence presented at hearing,

this Hearing Officer finds that the Parents were not provided with the mandated Parental Safeguards documentation at any of the IEP meetings held between June 2013 and June 2014. Mother and SG both testified to this and documentation supporting the District's contention that this information was provided is non-existent. (FF #49, 68-69.) It is further found that this violation alone did not result in denial of the Student's right to a FAPE. Mother did attend the Student's IEP meetings and provided parental input, although she was new to and unfamiliar with the eligibility and IEP process. (FF #49.) Although this violation alone does not rise to the level of a denial of the Student's right to FAPE, it is a factor appropriately considered by this hearing officer when balancing the equities.

(a) Evaluations

In the Due Process Compliant Notice, Parents allege that the Student was denied FAPE when the District failed to evaluate in all areas of suspected disability and failed to consider the recommendations of its own evaluators when formulating the Student's 2013-2014 and 2014-2015 IEPs. A student with a disability must be evaluated in all areas of suspected disability. 34 C.F.R. 300.304(c)(4). The IEP Team must consider the results of the initial or most recent evaluations of the child; and the academic, developmental, and functional needs of the child. 34 C.F.R. §300.324(a)(iii),(iv). The testimony and documentary evidence presented at hearing illustrate the following.

Mother and GET1 expressed concerns that the Student was struggling academically, was easily distracted, had difficulty applying knowledge, needed more reassurance than other students, and was frequently off task. Her off-task behaviors affected her classroom performance. The Assessment Plan reflected the Student's social/emotional status as being a relevant area for assessment. SW was to obtain data in this area from file review, parent, student

and teacher interviews, strength and weaknesses questionnaire for teacher and student. SW did not provide questionnaires for the teacher and student and did not administer rating scales to formally assess the Student's off-task behaviors, although the Assessment Plan required her to do so. No quantifiable data was collected regarding the distractibility and inattention of the Student. (FF #4.) SW failed to appropriately evaluate the Student for social work services. Significant evidence exists in the record regarding the Student's pervasive off task behavior and anxiety reported by both Mother and GET1. (FF #5, 31-33.)

Further, the IEP Team determined that assistive technology was required for the student to access the curriculum. However, the Student was not provided with the assistive technology services and supports listed in the June 2013 IEP. Further, the Student did not receive an AT evaluation. (FF #26-27.)

The District Psychologist evaluated the Student and found her to have significant weaknesses in visual processing which impacted her abilities in the areas of reading, writing, composing, and spelling. This impacted all areas of academic performance in the educational setting including the Student's ability to discriminate letters and learn early literacy skills, plan math operations, physically write, and organize written words. (FF #6.) Remediation would take the form of a learning disability specialist to assist with reading and an occupational therapy evaluation, goals, and services. Occupational therapy goals would assist the Student in improving her visual processing while reading, fine motor coordination and letter formation, and sensory issues. (FF #7.) The District did not evaluate the Student in the area of occupational therapy and no goals or services were provided. (FF # 8.)

The District Audiologist evaluated the Student and found her to have a mild CAP deficit, although the deficit in the Student's right ear was significant. (FF #34.) Remediation and

accommodations were recommended. AUD recommended Earobics and HearBuilder for remediation. (FF # 35.) The Student did not receive Earobics or HearBuilder and did not receive any remediation for her CAP deficit. (FF #36-37.)

SLP1 and SLP2 conceded that the Student had deficits in the areas of listening comprehension and oral expression. These deficits resulted in educational needs in the areas of grammar, word meaning, vocabulary, spelling, and following directions. These needs could have been addressed by SLP1 and SLP2. However, neither created IEP goals to address these needs. (FF #38-39, 45.) SLP1 believed that it was the responsibility of the special education teacher to create whatever additional language goals were needed. (FF #39.)

This Hearing Officer finds that the Student was denied FAPE when the District failed to appropriately evaluate her in the area of social work and failed to evaluate her for occupational therapy and assistive technology services. The Student's disability related needs in these areas were known and identified; yet the Student was either not adequately evaluated or not evaluated at all. It is further found that the Student was denied FAPE when the IEP team failed to adequately consider the recommendations of its own evaluators. AUD recommended remediation to address the Student's CAP deficit yet, none was provided. SLP1 and SLP2 conceded that it was within the province of the role of an SLP to address the Student's educational needs in the areas of grammar, word meaning, vocabulary, spelling, and following directions. However, SLP1 left that determination to the special education teacher, although SLP1 was present at the June 2013 IEP Team meeting and would presumably have known that these needs were not being addressed by SET1. (FF # 39.) SLP2 was twenty students over the ISBE mandated case-load limit and did not revise the Student's goals to address her needs.

(b) IEP Goals

In the Due Process Complaint Notice, Parents allege that the Student's 2013-2014 and 2014-2015 IEP goals in reading, writing, mathematics, and speech were not appropriate, failed to consider the Student's present levels of performance, and were not capable of meaningful measurement. Additionally, goals designed to ensure that the Student make academic progress in areas of identified need were not present.

Under IDEA, an IEP must include "(1) a statement of the child's present levels of academic and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum" and "(2)(i) [a] statement of measurable annual goals, including academic and functional goals designed to (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum." 34 C.F.R. 300.320(a). "[T]he IEP should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Id.* at 3036. "[A]n IEP is reasonably calculated to confer educational benefit when it is 'likely to produce progress, not regression or trivial educational advancement.'" *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7th Cir. 2004.) "Objective factors, such as regular advancement from grade to grade, and achievement of passing grades, usually show satisfactory progress." *Id.* The testimony and documentary evidence presented at hearing illustrate the following.

The Student's June 20, 2013 IEP created a reading goal which did not consider the Student's RtI data, which was not shared with the IEP team. (FF #13.) The goal was based on the Student's "very good ability to listen for information and to express herself orally", when the quantitative data assessing the Student's reading abilities was completely contrary to that contention. (FF #14-15.) The reading fluency goal was set, not at a mastery level, but at a

frustration level. (FF #17.) The data chart to track the Student's progress was not maintained. (FF #16.) This goal did not appropriately consider the Student's present level of performance, was not designed to ensure that the Student make educational progress and was not measured as required. (FF #18.) An additional reading comprehension goal expected unrealistic progress given the Student's abilities and contained double criterion in the benchmarks, making progress difficult, if not impossible to monitor. (FF #24-25.)

The June 20, 2013 math goal did not consider the Student's present levels of performance therefore making it impossible to determine progress, or lack thereof. (FF #19.) The June 20, 2013 writing goal reflected that the Student could write "short paragraphs and mini essays" which the testimony and documentary evidence overwhelmingly contradicted. The District's own personnel deemed this goal "unrealistic" given the Student's abilities at the time the goal was written. (FF #22- 23.)

The Student's June 6, 2014 IEP contains a combined reading fluency and comprehension goal. The Student's present levels of performance, upon which the goal is based, are inconsistent, do not relate to the goal, and do not provide a basis upon which to measure the Student's progress. (FF #61.) The same IEP contains a math goal which does not reflect the Student's present level of performance and is contrary to the Student's noted ability level. (FF #64.) The writing goal does not reflect the Student's current ability level at the time the goal was drafted and is it unclear what quantitative measures of performance would look like. (FF #66.) All of these goals do not adequately reflect the Student's ability level at the time the goals were designed, do not contain information which would allow progress to be satisfactorily measured, and therefore, are not designed to ensure this Student's academic progress. (FF #67.) In fact, the Student failed 3rd grade and failed to matriculate to the 4th grade. (FF #57.) The "objective

factors, such as regular advancement from grade to grade, and achievement of passing grades, usually show satisfactory progress” discussed in *Alex R.* and *Beth B.* are very clearly not present.

Based upon the above, this Hearing Officer finds that the Student was denied FAPE. Her 2013-2014 and 2014-2015 IEPs contained reading, writing, and math goals that did not consider present levels of performance, were unrealistic given the Student’s known ability levels, did not contain measurable criteria with which to appropriately track the Student’s progress, and therefore, were simply not designed to ensure that the Student make adequate educational progress. The Student did not make educational progress as she failed 3rd grade and did not matriculate.

(c) Needs

An individualized education program (IEP) “must include [a] statement of measurable annual goals, including academic and functional goals designed to [m]eet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum.” 34 C.F.R. §300.320(a)(2)(i)(A). The testimony and documentary evidence presented at hearing illustrate that the Student had identified speech language needs in the areas of grammar, word meaning, vocabulary, spelling, and following directions. (FF #45.) She had identified needs in the areas of spelling and reading comprehension. (FF #60.) She had difficulty sounding out long vowel sound words and vowel diphthong syllables. (FF #62.) The Student required intensive phonics instruction. (FF #63.) She struggled with word problems in math (FF #65.) No IEP goals were created during the 2013-2014 or 2014-2015 IEP meetings to address these needs. Therefore, based upon the above, this Hearing Officer finds that the Student was denied FAPE when the District failed to address these identified areas of need in her IEPs.

(d) Services

An individualized education program (IEP) “must include [a] statement of the special education and related services and supplementary aids and services, . . . to be provided to the child . . . to enable the child to advance appropriately toward attaining the annual goals. 34 C.F.R. §300.320(a)(4)(i). The Student’s 2013-2014 and 2014-2015 IEPs provided for speech language services and created one goal related to the “R” sound. The Student was to receive 30 minutes per week of direct speech language instruction in a separate class. (FF #40.) The Student received an average of 12 minutes of speech language instruction per week during the 2013-2014 school year. (FF #43.) While the Student’s IEP report card reflected that she was making expected progress toward all of the goal benchmarks, SLP2’s service log and testimony illustrated otherwise. SLP2 only worked with the Student on two of the goal benchmarks and, one of the goals benchmarks was only worked on twice. One goal benchmark was not worked on at all. The Student was not progressing with respect to the goal benchmarks, and therefore was not progress toward the IEP goals itself. (FF #41-44.) Based upon the evidence presented, this Hearing Officer finds that the Student was denied FAPE when she did not receive the required weekly speech language service minutes and when her IEP report card reflected expected progress to goal benchmarks that she rarely, if even, worked on, and toward which she was not progressing.

Appropriateness of Parents’ Unilateral Placement

The second prong of the *Burlington-Carter* inquiry requires the Parent’s unilateral placement to be appropriate. In determining whether a unilateral placement is appropriate, the relevant inquiry is “whether it is reasonably calculated to enable the child to obtain educational benefit.” *Board of Education v. Rowley*, 458 U.S. 176 (1982). More specifically, based on a totality of factors, “[a] unilateral private placement is only appropriate if it provides ‘educational

instruction *specifically* designed to meet the *unique* needs of . . . the child [with a disability].” *Bd. of Educ. V. Risen*, 61 IDELR ¶130 (N.D. Ill. 2013); *Jenna R.P. v. City of Chicago Sch. Dist. No. 229*, 3 N.E.3d 927 (Ill. Ct. App. 2013)(both citing the *Rowley* quotation in *Frank G. v. Bd. of Educ.*, 459 F.3d 356, 365 (2d Cir. 2006)). “A unilateral private placement cannot be regarded as ‘proper under the [IDEA]’ when it does not, at a minimum provide some element of special education services in which the public school placement was deficient.” *Jenna R.P.* at 941.

At the outset, this Hearing Officer has determined that the District did not make a FAPE available to this Student during the 2013-2014 or 2014-2015 school years. Therefore, the inquiry turns to the appropriateness of the Parents’ unilateral placement.

Parents’ placed the Student at TDS for Summer school 2014 and for the 2014-2015 school year. The Student has significant specific learning disorders that have been present since her educational history began. She has visual, auditory, and phonological processing issues. These cognitive weaknesses significantly affect her reading, writing and math skills. She also has clinically significant anxiety symptoms with regard to separation anxiety. Her anxiety is school related and her struggles with school exacerbate her anxiety. (FF #70.) Based upon the Student’s disabilities, she requires scope and sequence instruction. The Student needs to break down words as she sees them, processing them from beginning to end. She also needs to access the information from multiple channels due to her visual perception and auditory processing impairments. (FF #48.) TDS’s educational program is designed to address the Student’s unique needs, the methodology used targets her deficits, and supports are integrated from teacher to teacher and from class to class throughout the day. This Student requires the intensity of instruction provided at TDS due to her unique, educational needs, as she needs intense instruction that targets her cognitive weaknesses. The Student needs interventions that are

proven to be effective for her unique needs, provided in a systematic, intense way with continuous practice and feedback. District schools are unable to provide sufficient intensity for this Student. (FF #71, 73, 63.)

TDS uses a multisensory reading program so students obtain information visually, auditorily, and kinesthetically through all senses. TDS uses formal Wilson, Orton Gilligham based assessments to track student progress in the multisensory reading program. The Student has challenges in multiple processing areas. She cannot hear differences within short vowel sounds, has visual, perceptual, and processing issues, and is not always able to obtain information from a written page. She needs tactile components to feel and obtain information. At TDS, the Student receives Wilson reading instruction, speech language, occupational therapy and social work services. She receives occupational therapy twice per week. There is a 30 minute classroom component and 30 minute individual instruction for handwriting and self-regulation. The occupational therapy addresses her visual spacial, visual motor, and self-regulation issues, and hand writing weakness. She receives 30 minutes per week in individual social work services and one hour of classroom social work services to address her social emotional issues to ensure that she is available for learning. She receives speech language services twice per week. These are pull out services which target auditory processing, expressive language, organizational skills, visualizing and verbalizing in reading. The Wilson reading skills are integrated throughout her school day in every class and she constantly receives corrective feedback from adults throughout her day. The Student also has accommodations: manipulatives, fidgets, movement breaks, a band on her chair that offers resistance which she can push against, a tracker to prevent her from skipping lines on a page while reading. (FF #74.)

The Student's progress at TDS is monitored using qualitative and quantitative assessment data, classroom observations, and anecdotal evidence. The Student has made academic progress since enrollment at TDS. (FF #72, 75.) The Student is able to read signs and text messages. She is able to complete homework independently. She is more confident in her skills and abilities. (FF #76.)

This Hearing Officer finds that TDS is an appropriate educational placement for this Student. TDS's educational program targets this Student's unique deficits and educational needs with the level of intensity she requires to progress academically. While the District alleged that TDS's lack of fidelity in implementing the Wilson language program makes the placement inappropriate, this Hearing Officer's finding is to the contrary. TDS crafts the Wilson system to meet the unique educational needs of its students, including this Student. The Student receives services in the areas of occupational therapy, social work, speech language, and assistive technology that meet her identified needs. The District is unable to provide the scope and sequence instruction at the level of intensity required by this Student given her unique educational needs. (FF #78.)

Balancing of Equities

The threshold inquiry is whether the Parents provided timely notice to the District, either at the most recent IEP meeting or in writing at least 10 business days before the Parents' removal of the child, including stating their concerns and their intent to enroll the Student in a private school at public expense. 20 U.S.C. §1412(a)(10)(C)(iii)(1); 34 C.F.R. §300.148(d)(1). At the time of the June 6, 2014 IEP meeting, DS2's Assistant Principal, SET2, GET2 and the IEP team knew that Mother and Father were going to remove the Student from the District if they were able to obtain financial aid from TDS. Mother told DS2's Assistant Principal in a telephone

conversation prior to the IEP meeting. (FF #59.) Mother's testimony to that effect was un rebutted by the District. While IDEA requires that this notice be in writing, this Hearing Officer finds that Parents are excepted from this requirement. See *W.M. v. Lakeland Cent. Sch. Dist.*, 783 F. Supp. 497 (S.D.N.Y. 2011.) As stated above, the evidence presented reveals that Mother was not informed of this requirement, as she never received the Procedural Safeguards documentation from the District. (FF #49, 68-69.) This Hearing Officer finds that based upon the testimony presented, Parents provided timely notice to the District of their intention to remove the Student from the District.

An additional consideration is whether "the cost of the private education was unreasonable." *Carter* 510 U.S. at 16. 78. Mother and Father applied for a scholarship for the Student to attend TDS. The cost of tuition for the Summer 2014 and the 2014-2015 school year, net of scholarship funds received, was \$19,430.00. The 2014-2015 school year tuition was less than half TDS's stated cost after scholarship funds were applied. Mother and Father paid this amount to TDS. (FF #78.) This Hearing Officer finds that the cost of the Student's private education is reasonable, especially when measured against the extent to which a FAPE was denied.

A further consideration is whether the Parents cooperated with the District in its attempts to provide the Student with FAPE. *Bd. of Educ. V. Mr. and Mrs. V.*, 32 IDELR ¶139 (N.D. Ill. 2000.) In the instant matter, Mother had a continuous dialog with GET1, GET2, SET1, SET2 and the Assistant Principal at DS2, over a two year period, regarding the Student's on-going academic struggles and anxiety. (FF #47, 58.) Mother went to DS2 weekly to organize the Student's desk, as she struggled with organization, so the Student could start each week anew with accessible educational materials. Parents engaged a tutor who was a reading specialist,

certified in SLANT instruction that was able to provide structured, multi-sensory, scope and sequence instruction to meet the Student's unique needs. (FF #48.) Mother sought the DS2 staff cooperation in creating an arrangement that would work for the Student. (FF #50.) The private tutor, SG, provided reading materials that the Student could access to the District staff for use at school. She provided books that the Student could read so she had materials to read during silent reading time. SG provided a phonics-based, structured workbook for the Student to use at school. She also provided Earobics software to the Student's classroom teacher. She observed the Student during class to try to assist with ensuring the Student was functioning as a participating member of her classroom. (FF #51-55.) This Hearing Officer finds that Parents went above and beyond in their efforts to work cooperatively and collaboratively with the District to ensure that their Student received a FAPE.

Therefore, this Hearing Officer determines as follows:

Based upon the above equity considerations including the Parents' timely notice to the District, reasonable cost of TDS's tuition, Parents' on-going attempts to work cooperatively and collaboratively with the District over at least a two year period, and the extent to which this Student was denied FAPE by the District, and appropriateness of the Parents' unilateral placement at TDS, the evidence presented weighs overwhelmingly in favor of Parents. Therefore, the Parents' request for tuition reimbursement in the amount of \$19,430.00 is granted.

This Hearing Officer finds that the same legal analysis applies to the Parents' request for reimbursement of tutoring expenses. The Parent's private tutor, SG, was uniquely qualified to identify the Student's educational needs and provide services to address and remediate those needs at a time when the District denied the Student FAPE. (FF #48-55.) SG provided support to the District as well as to the Parents and Student by providing materials and software for the

Student's use at school. These materials were uniquely tailored to meet the Student's educational needs. Based upon the extent of the denial of FAPE to this Student and the equity considerations, this Hearing Officer finds that the evidence weighs overwhelmingly in favor of the Parents. Therefore, the Parents' request for tutoring fee reimbursement in the amount of \$5,454.62 is granted.

ORDER

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

Parent's requested relief is granted.

The District is Ordered as follows:

1. To reimburse Parents for HPDS tuition paid in the amount of \$19,430.00.
2. To reimburse Parents for tutoring fees paid in the amount of \$5,454.62.

In accordance with 105 ILCS 5/14-8.02a(h), within **45** 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.

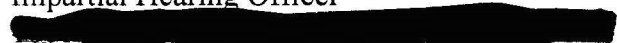

NOTICE OF RIGHT TO APPEAL

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.


Dated: February 13, 2016


/s/ Janet K. Maxwell-Wickett

Janet K. Maxwell-Wickett,
Impartial Hearing Officer



Phone: 

Fax: 

Email: 

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]

Student,

Case No: 2016-0063

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]

School District.

CERTIFICATE OF SERVICE

I, Janet Maxwell-Wickett, certify that on February 13, 2016, copies of the *Final Determination & Order* were served upon the following persons in the manner indicated:

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

[REDACTED]

[REDACTED]

[REDACTED]

ILLINOIS STATE BOARD OF EDUCATION

Sent Electronically via Email Only

Andrew Eulass
aeulass@isbe.net

[REDACTED]

Dated: February 13, 2016

[REDACTED]

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

[REDACTED]

APPENDIX A

Isabel Straus v. City of Chicago SD 299
Case No: 2016-0063

Child	[REDACTED]
Attending School	[REDACTED]
Child's Parent(s)/Petitioners	[REDACTED] (Mother)
	[REDACTED] (Father)
Witnesses:	
Student's Tutor	[REDACTED] (SG)
Dr. [REDACTED]	Parents' Neuropsychologist (Dr. O)
Dr. [REDACTED]'s Neuropsychologist Intern	[REDACTED] (NP)
Speech Language Pathologist - [REDACTED]	[REDACTED] (SLP1)
Audiologist - [REDACTED]	[REDACTED] (AUD)
Psychologist - [REDACTED]	[REDACTED] (PSY)
Speech and Language Psychologist - [REDACTED]	[REDACTED] (SLP2)
Case Manager - [REDACTED] - Peirce Elementary	[REDACTED] (CM2)
Case Manager - [REDACTED] - Peirce Elementary	[REDACTED] (CM3)
Social Worker - [REDACTED]	[REDACTED] (SW)
Case Manager - [REDACTED] - Inter-American Elementary	[REDACTED] (CM1)
Special Education Teacher - [REDACTED]	[REDACTED] (SET2)
Special Education Teacher - [REDACTED]	[REDACTED] (SET1)
Principal - [REDACTED] School	[REDACTED] (MM)
General Education Teacher - [REDACTED]	[REDACTED] (GET2)
General Education Teacher - [REDACTED]	[REDACTED] (GET1)
Schools:	
[REDACTED] Elementary - [REDACTED]	District School 1 (DS1)
[REDACTED] School - [REDACTED]	District School 2 (DS2)
[REDACTED] School - [REDACTED]	Therapeutic Day School (TDS)