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ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

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STUDENT,

Student,

Case No: 2016-0425

v.

Kathleen C. Fuhrmann, Impartial Hearing

Officer

██████████ SD ██████████,

School District.

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**FINAL DETERMINATION AND ORDER**

The undersigned hearing officer has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 *et seq.*, and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*, and her appointment as hearing officer by the Illinois State Board of Education (ISBE) on May 27, 2016.

**BACKGROUND**

Student is an eleven (11) year old, sixth (6<sup>th</sup>) grade boy, who has been determined to be eligible for special education and related services under the disability categories of autism and is currently enrolled as a unilateral placement by his parents in a private therapeutic day school (CCDS). Prior to his recent enrollment in CCDS, Student attended WES as a 5<sup>th</sup> grade student in the District's GIP. If Student was enrolled in the District schools, he would be attending the GIP at CMS for 6<sup>th</sup> grade for the regular and extended school year and would receive the services 1515 minutes per week of special education and related services outside of the general education setting and 560 minutes per week in General Education with supplementary aides as prescribed in the April 14,

2016 IEP (Individualized Educational Program) that is in dispute. (SD 96-98 and PD 258-304.)

The instant due process complaint arises out of differences concerning Student's individualized educational needs, including his 2016-17 school year placement as contained in the April 14, 2016 IEP. Parents assert that educational placement in the District's GIP, the related services and minutes of service were inappropriate to meet his individualized educational needs and did not (during the 2014-2015 and 2015-2016 school years) and will not (during the 2016-2017 school year) provide Student with a free appropriate public education. Parents also assert that the current (2016-2017 school year) goals are not appropriate to meet Student's individualized educational needs and the District created prompt dependence limiting Student's overall independent functioning. (IHO A, pgs. 1 - 8, and SD 49-55.)

Parents filed their due process complaint on May 20, 2016 and were granted leave to amend the complaint to include an additional request for relief seeking on August 23, 2016. District was allowed to raise additional defenses in response to the additional relief request. This hearing officer was appointed to preside over this case on May 27, 2016. The parties participated in state sponsored mediation on June 3, 2016. No agreements were reached during mediation. Pursuant to 105 ILCS 5/14- 8.02a(g-40), the prehearing conference was convened in this matter on July 11, 15, and August 1, 2016, the Prehearing Conference Report and Order was issued on August 5, 2016. In addition, on August 16, 2016 a status conference was convened that resulted in revisions to some provisions of the Prehearing Conference Report and Order which were contained in the Supplement to Prehearing Conference Report and Order issued on August 23, 2016.

The original 45 day decision timeline began to run on June 20, 2016. On August 3, 2016, a joint motion for continuance and extension of the 45 day decision deadline was granted and the 45 day decision deadline was extended to November 7, 2016.

The hearing was held at the District offices on August 25, 26, September 17, 19, 20, 21, 22, 23, 28 and October 7, 2016. The due to the unavailability of witnesses, the parties schedules, school calendars and the illness of a witness (on September 28, 2016), good cause was found to extend the hearing dates beyond 30 days after September 25, 2016 to enable both the District and Parent to have a fair opportunity to put on their

respective cases. The hearing was closed. Parents were represented by [REDACTED], Esq. of [REDACTED], LLC and the District was represented by [REDACTED], Esq. and [REDACTED], Esq. of [REDACTED]. The following witnesses testified: [REDACTED] (Parent), [REDACTED] (Executive Director of Student Service), [REDACTED] (District Speech/Language Pathologist), [REDACTED] (District Occupational Therapist), [REDACTED] (Private Speech/Language Pathologist), [REDACTED] (Private Occupational Therapist), [REDACTED] (Private Clinical Psychologist), [REDACTED] (School Psychologist), [REDACTED] (Private Educational Consultant), [REDACTED] (Private Behavior Analyst), [REDACTED] (District Teaching Assistant and Private Teaching Assistant), [REDACTED] (District Physical Therapist), [REDACTED] (NSSED Occupational Therapist), [REDACTED] (Special Education Teacher), [REDACTED] (General Education Teacher), [REDACTED] (Adaptive Physical Education Teacher), [REDACTED] (Special Education Teacher), and [REDACTED] (Elementary School Principal). [REDACTED] and [REDACTED] of [REDACTED] Court Reporting, of Chicago, Illinois were the court reporters for this hearing. No transcript was issued prior to the date of this decision. The testimony referenced below is based on the undersigned's written hearing notes and memory.

The following documentary and video evidence was admitted during the hearing: IHO Exhibits A through QQQ; Parent Exhibits 1 through 9, 14, 15, 17 (pgs. 341-2 only), 18 through 20, 22 through 36, 38 through 47, 49, 58, 61, 62, 65 through 68, 74, 75, 78, 79, 81, 84 through 91; and District Exhibits 3 through 6, 10, 13, 14, 16, 17, 20, 23 through 41, 47, 52, 62, 64 through 66, 70 through 73, 93, 98, 100, and 128.

In rendering this decision, the undersigned has considered all documents entered into evidence, testimony of the witnesses and the parties' opening statements and closing arguments and the applicable law. This decision was issued within ten (10) days after the hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(g-55)(5)

### ISSUES

The issues, requested relief, and defenses being presented for determination are as follows:

Issue One: Did educational placement of Student in District's Guided Learning Program for Student's 2014-2015, 4<sup>th</sup> Grade School Year and/or 2015-2016, 5<sup>th</sup> Grade School Year, result in the denial of a free appropriate public education (herein, "FAPE") to Student:

- i. Did Student fail to make substantial/meaningful education progress during his 2014-2015, 4<sup>th</sup> Grade School Year and/or 2015-2016, 5<sup>th</sup> Grade School Year;
- ii. Was academic instruction during Student's 2014-2015, 4<sup>th</sup> Grade School Year and/or 2015-2016, 5<sup>th</sup> Grade School Year, appropriate to meet Student's individualized educational needs;
- iii. Does Student require educational placement in a therapeutic day school setting to meet his individualized educational needs?

Issue Two: Did District fail to provide Student with appropriate Related Services and Service Minutes during his 2014-2015, 4<sup>th</sup> Grade School Year and/or 2015-2016, 5<sup>th</sup> Grade School Year, resulting in a denial of FAPE to Student:

- i. During Student's 2014-2015, 4<sup>th</sup> Grade School Year, did District's failure to provide Student with Social Work and/or School Psychologist Related Services and Service Minutes fail to appropriately meet Student's individualized education needs;
- ii. Until January 2016, during Student's 2015-2016, 5<sup>th</sup> Grade School Year, did District's failure to provide Student with Social Work and/or Psychologist Related Services and Service minutes fail to appropriately meet Student's individualized educational needs;
- iii. During Student's 2014-2015, 4<sup>th</sup> Grade School Year and/or 2015-2016, 5<sup>th</sup> Grade School Year, did District fail to provide Student with appropriate Occupational Therapy Service Minutes to meet his individualized educational needs;
- iv. During Student's 2014-2015, 4<sup>th</sup> Grade School Year and/or 2015-2016, 5<sup>th</sup> Grade School Year, did District fail to provide Student with appropriate Speech and Language Service Minutes to meet his individualized educational needs;

v. In January of 2016, was District's removal of Physical Therapy Related Services and Service Minutes from Student's IEP Plan appropriate to meet his individualized educational needs?

Issue Three: Are the IEP Goals in Student's current IEP plan appropriate to meet his individual educational needs?

Issue Four: During Student's 2014-2015, 4<sup>th</sup> Grade School Year and/or 2015-2016, 5<sup>th</sup> Grade School Year, did District's instructional model foster prompt dependence limiting Student's independent functioning in the school setting, resulting in a denial of FAPE to Student?

Parents seek the following remedies:

i. Amendment of Student's 2015-2016 IEP Plan changing Student's educational placement to a private therapeutic day school placement;

ii. Educational placement of Student at [REDACTED] Day School, an Illinois State Board of Education therapeutic day school placement in [REDACTED], Illinois, fully funded by District, with transportation included, for Student's regular and extended 2016-2017, 6<sup>th</sup> Grade School Year;

iii. At the end of Student's extended 2016-2017, 6<sup>th</sup> Grade School Year, Student's then-current IEP Team will determine Student's educational placement for his 2017-2018, 7<sup>th</sup> Grade School Year;

iv. Revision of IEP Goals in Student's current IEP Plan for his 2016-2017 School Year, removing current academic goals and replacing with IEP Goals drafted by Student's new IEP Team that address Student's foundational pre-academic and academic deficits in Reading, Written Expression, and Math;

v. Revision of IEP Goals in Student's current IEP Plan for this 2016-2017 School Year, removing current Related Service(s) goals and replacing with IEP Goals addressing Student's underlying foundational deficits in each Related Service domain and/or subdomain;

vi. Revision of Student's current IEP plan for his 2016-2017, 6h Grade School Year, to increase his Related Service Minutes for Social Work/School Psychologist, and Occupational Therapy with consideration for:

- A. Social Work/School Psychologist: 150 mpw
- B. Occupational Therapy: 150 mpw

vii. Revision of Student's current IEP Plan for his 2016-2017, 6<sup>th</sup> Grade School Year to provide Student with 1:1 direct services with Speech and Language Pathologist for the 120 mpw currently set forth in Student's IEP Plan;

viii. Compensatory Education, for a period of not less than two (2) School Years, including extended school year periods, resulting from District's failure to provide Student with appropriate academic instruction, programming and/or placement during Student's 2014-2015, 4<sup>th</sup> Grade School Year and Student's 2015-2016, 5<sup>th</sup> Grade School Year, with consideration as follows:

- A. Private Academic Instruction/Tutoring: *Market Rate*
  - 1. Reading: 1 hour per week
  - 2. Written Expression: 1 hour per week
  - 3. Math: 1 hour per week
- B. Private Speech and Language Services: *Market Rate*
  - 1. 2 hours per week
- C. Private Occupational Therapy Service: *Market Rate*
  - 1. 2 hours per week
- D. Private Social Work/Psychologist Services: *Market Rate*
  - 1. 1 hour per week

ix. Compensatory Reimbursement, for a period of not less than two (2) School Years, including extended school year periods, for private service provided to Student during his 2014-2015, 4<sup>th</sup> Grade School Year and 2015-2016, 5<sup>th</sup> Grade School Year with consideration of the following:

A. [REDACTED], Behavioral/Social-Emotional Practitioner: *Out-of-Pocket Costs/Expenses* 1 hour per week

B. [REDACTED] Pediatric Therapy, Occupational Therapist: *Out-of-Pocket Costs/Expenses* 1 hour per week

x. Compensatory Reimbursement for Private Physical Therapy provided to Student following removal of Physical Therapy Related Services and Service Minutes from Student's now current IEP Plan as follows:

1. [REDACTED], Physical Therapy: *Out-of-Pocket Costs/Expenses* 1 hour per week

xi. Reimbursement of costs and expenses associated with Unilateral Placement at [REDACTED] Day School.

District denies the allegations set forth by Petitioner and asserts that at all relevant times it has provided Student with FAPE. District seeks as relief an order providing that the School District has provided Student with a FAPE in the least restrictive environment, including with regard to placement, related services and service minutes, and IEP goals.

**FINDINGS OF FACT**

After considering all the evidence, as well as the arguments of both course, the Hearing Officer's findings of fact are as follows:

**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. Student is a 11 year old boy, currently attending CC in the 6<sup>th</sup> grade pursuant to his parents unilateral placement in August, 2016.
2. Student has a medical diagnosis of Autism Spectrum Disorder (PD 190, PD 454, SD 181 ) and Intellectual Disability (DSM-5: 317, Mild to Moderate) (PD 454, SD 181).
3. Student was been found eligible for special education under the category of Autism since Kindergarten and continues to be eligible under this category to date.  
(Testimony, Father, PD 65, PD 165, SD359-360, 386-401)
4. Student is significantly delayed compared to his age peers in the areas of cognition, communication, fine and gross motor and social/emotional development.  
(Testimony, Father, Dr. O.K., N.E, L.G, S.J., C.M., M.S, Dr. C.R., M.D., and K.L., PD 48-64, PD190-207, PD 449-460, PD 464-480, PD 605-609, PD 610-612, SD 176-187, SD 234-358, SD 359-360, SD 386-401, SD 768- 771.)

#### EDUCATIONAL HISTORY

5. Student began receiving Early Invention services shortly after his high-risk premature birth, including occupational therapy, physical therapy, and speech and language therapy. (Testimony, Father, PD 190, SD 386)
6. At age three (3), Student began attending public preschool and received special education services through [REDACTED] under the category of Developmental Delay (PD 190, SD 386) and his parents continued with private occupational therapy services.
7. Student attended District's special ELS or GIP special education program from Kindergarten through 5<sup>th</sup> grade at WES, where he received special education in a separate special education classroom, adaptive physical education (APE), participated in

the general education program, a behavior intervention plan, speech language therapy, occupational therapy (OT), and physical therapy (PT). (Testimony, Father, N. E., PD 20-45, 46-101, 102-134, 135-156, 157-207, 208-230, 262-304, SD 446-510, 347-411, 204-233, 13-106, 113-146.)

8. District's ELS and GIP are classroom programs designed to meet the special education need of students with significant disabilities using a transdisciplinary mode in an inclusive school model. The program provides students with intensive support and direct instruction in areas of social and interpersonal skills, communication, behavior, academics and functional life skills. ELS and GIP teams are made up of a special education teacher, school psychologist, speech and language pathologist, school social worker/counselor, occupational therapist, physical therapist and teaching assistants. The team provides students with learning experiences in a language-enriched environment by using the District's curriculum as the foundation and the student's individual needs, the requirements of their IEP and Common Core Standards as the basis for instruction. ELS and GIP student's whose academic needs cannot be addressed through the general curriculum are provided alternate academic programming. (Testimony Dr. J.M., N.E., M.S., M.D., L.G., C.M., K.E., K.T., and S.J., SD 548)

9. District teachers and other team members in the ELS and GIP are trained in and implement models such as behavior analysis, ABA, SCERTS, TEACH and use these the models to implement the District's curriculum and each student's IEPs in the school environment. (Testimony Dr. J.M., N.E., M.S., M.D., L.G., C.M., K.E., K.T., and S.J., 556-559, 560-561, 564-567, 568-571, 572-576, 577-579, 580-584, 585-586,)

ACADEMIC

10. In Kindergarten, Student demonstrated emerging skills in all areas, including, Language, Social, Emotional/Behavioral, Reading, Math and Writing. These emerging skills were significantly delayed when compared with peers. (PD 53-54, Testimony, N.E., C.M., and S.J.)
11. From Kindergarten through Second grade, Student worked on the academic skills (reading, math and writing), language, social and emotional skill development through his entire school program. Student received direct and group instruction in these foundational skills in addition to the instruction needed for mastery of his IEP goals in his ELS/GIP classroom. (Testimony, N.E., and L.G. )
12. By the middle of Second grade, Student's learning to use the sound-symbol correspondence to decode C-V-C (consonant-vowel-consonant) words, and was developing a sight word vocabulary, reading more easily on the Promethean board than from text in Reading stations. (PD 330, 332, 138-139) Student struggled with the reading comprehension, especially with the concepts of who and what, and sequencing in Kindergarten and First grade. (PD 330, 332) In second grade, he was able to answer who and what questions after reading, but still needed support and ongoing work on this concept. (PD 138) (Testimony, N.E. )
13. By the middle of second grade, Student had acquired some foundational Math skills. He was able to identify numbers from 1-100, made and recognize sets 1-20, had memorized some simple addition problems, and was able to identify the names and values of coins. (PD 138)
14. By the middle of second grade, Student was able to write letters in two (2) inch square boxes and was reported to enjoy writing stories using picture prompts. (PD 138)

15. Student slowly acquired and mastered some, but not all of these foundational skills as demonstrated by his mastery of IEP goals, his progress in the academic, social and emotional/behavioral areas. This progress was measured and reported to parents through progress notes and report cards, on assessments, informal and formal.

(Testimony, N.E., PD 330-331, 332-335, 341-343, 353-371, Testing needs to be listed here)

16. Throughout the period from kindergarten through second grade, Student's availability for learning increased as he developed rapport with the teaching team, when verbal language was limited to brief statements, he was given additional time to process language (especially when heightened or dysregulated) and through the provision of visual supports. (Testimony, N.E.)

17. In third grade, Student's academic goals were in Reading comprehension ( who, what, where questions) and Mathematics (addition by forming sets, 1:1 correspondence). (PD 171, 176-177) Student met the Reading goal, but did not meet the Math goal (met 3 of 4 benchmarks). (PD 382-383, 386-388)

#### ADAPTIVE PHYSICAL EDUCATION

18. Student participated in Adaptive Physical Education between Kindergarten and third grade. His goals during this period were to increase object control and locomotor skills. He received 60 mpw in Kindergarten and first grade and 30 mpw in second and third grade. Student demonstrated progress in skill development in throwing, catching, kicking, skipping and hopping and met most objectives until they were discontinued after he broke his arm. (PD 54,61-61, 97, 331, 106-125, 112-113, 333, 139, 144, 357-358, 179, 375)

#### FUNCTIONAL/SOCIAL/EMOTIONAL/BEHAVIORAL

19. Student progressed from frequent dysregulation resulting in dropping to the floor, head banging and butting, and whining during transitions between locations and activities and requiring a high level of prompting for a good portion of the school day to being able to transition using a visual schedule and to gain a preferred activity on a regular and consistent basis with a minimal level of prompting. (Testimony, N.E., PD 50-58, 67-68, 106128-129, 138-139, 194-196)

20. Entrance and exit routines provided Student with regular and consistent instruction and guided practice of various self-help, independence, social and communication skill development in a natural and dynamic school setting. Student gained skills in the areas of self-help, independence, emotional and behavioral regulation through his entrance and exit routines. Student progressed from initially requiring high levels of support through prompting, verbal and gestural, to complete these routines to a degree of independence at the end of First grade as demonstrated by only the occasional need for prompts at certain specific points in the routines. Over the years, these routines increased in the complexity of the tasks required and the amount of support needed by and provided to the student increased and decreased appropriately as he mastered various aspects of the routines and the routines as a whole. (Testimony, N.E., and L.G., PD 330, 332, 163, 167 )

21. Student demonstrated his independence and social/emotional skills in the general education setting and special education classroom settings. Student progressed from requiring a high level of adult support to exit the bus and enter the school (PD 51-52) to being able to transition from special education classroom to a second grade classroom, take his seat without prompting and to listen to a daily poem and sit on the rug with the class and participate with prompting. (PD 138, 163, 167.)

## RELATED SERVICES

22. From kindergarten through third grade, Student's IEPs provided for 120 minutes per week (mpw) of Speech and Language therapy to address his moderate delays in the areas of speech and language and his articulation. (PD 55-60) Student's IEP goals focused on articulation and language deficits, including speech sounds /f, v, m, b, p/and increasing the length of expressive utterances, answering "wh" questions, spatial concepts, verbs and attributes, sequencing, and social communication, especially asking for help. (Testimony PD 20-45, 46-101, 102-134, 135-156, 157-207)

23. Student received direct services and program support from the speech and language pathologist in the ELS and GIP program and the speech language pathologist was a member of the ELS and GIP team providing indirect and program support in areas of speech and language. From Kindergarten through third grade, Student met his IEP goals in the area of speech language. (Testimony, K.L., PD 330-331, 332-335, 341-343, and 372-379)

24. In kindergarten, Student's IEPs provided for 60 minutes per week (mpw) of occupational therapy (OT) and from first through third grade Student's IEPs provided for 30 mpw of OT to address his moderate delays in fine motor skills. Student's OT IEP goals kindergarten through third grade focused on handwriting. (PD 33, 72, 108, 147, 169) From Kindergarten through second grade, Student met his IEP goals in the area of OT. (PD 331, 353-54, and 378-79) Student did not meet his OT goal concerning writing in third grade at the level of accuracy required in the goal, however, the progress note indicated that he was more successful in writing activities with smaller boundaries to assist him with organization and boundary space. (PD 380-81) Student met his third grade goal concerning school routines. (PD 170, 381-82) In addition, Student

progressed in areas of grooming, dressing, accessing computer equipment, and toileting.  
(PD 331, 333)

25. In kindergarten Student's IEP provided for 60 minutes per week (mpw) of physical therapy (PT) to address his significant weakness in motor skills, showing weakness in posture (standing and sitting), gait (walking and running), poor head control, poor balance and equilibrium. He presented with low muscle tone throughout his trunk and extremities. It was noted that Student had functional strength to allow independent movement at school, but demonstrated core weakness which impacted some functional tasks. (PD54, 61-64.) From first through third grade, Student's IEPs provided for 30 mpw of PT. Kindergarten PT goal focused on increasing strength and endurance to sustain a fast walk and to improve trunk strength and use of upper extremities to play with balls. (PD 34, 35) From first through third grade, Student's PT IEP goals focused on improving trunk strength and balance for jumping, rising from the floor, and walking on a balance beam. (Testimony 122-123, 146) While student improved in these areas, he was inconsistent in meeting his specific PT goals. (PD 341-42, 367-69, 377)

26. From kindergarten through third grade, Student's IEPs contains details concerning the "supports" and supplementary aids, accommodations and modifications provided for Student, including visual supports and schedules, models and cues for social interactions, social stories, low key praising, quiet time, sensory breaks/strategies, oral input, repetition, alternate seating to improve trunk strength, AFO's, alternate seating for group instruction, BIP, support navigating uneven surfaces, and supervision on stairs and playground. (PD 16, 36, 94, 131-133, 148, 154-155, 180-181.)

**4<sup>TH</sup> GRADE 2014-2015 SCHOOL YEAR**

28. Student began 4<sup>th</sup> grade the fall of 2014 with the 3<sup>rd</sup> grade IEP, that was developed on February 5, 2014. (PD 157-207, SD 347-411)

29. At that time, based on the annual review of the IEP and the tri-annual re-evaluation and eligibility determination, Student was identified being unable to access the general education curriculum due to his disability and needing an educational and life skills program to provide modeling, prompting, visual supports, additional processing time, structure and predictability. Student required language rich enrichment that provided visual support and an adapted curriculum with OT, speech and language therapy and counseling services to meet his educational needs.

(Testimony, L.G., PD 157-207, SD 347-411)

30. Student, a visual learner and verbal communicator, primarily used two to four word utterances to communicate in the classroom. Student' communication needs included the need to expand his expressive output by producing complex sentences that include one detail such as an attribute or location, ask questions to gain information and to develop self-advocacy skills. Student's needs also included developing legible handing writing and clothing management, significant weakness of his core musculature and shortening of several of lower extremity muscle groups impacting his sitting balance and ability to rise from the floor, as well as locomotion and object control. (PD 157-207, SD 347-411)

31. Student's adaptive behavior skills fell in the low range as rated by his mother and teacher on the Vineland Adaptive Behavior Scales-Second Edition in February, 2014. He was found to have similar skills across the communication, daily living skills and socialization domains and across settings. Student required support to complete his daily self-help tasks and to engage with others. (PD 190-205, SD 386-401.)

32. In the domains of social communication and emotional regulation, as measured on the SCERTS Assessment Protocol (2006), Student demonstrated relative strengths and emerging skills in each domain and subdomain. In the Social Communication domain, Student's Joint Attention subdomain relative strengths included his ability to share emotions, protest undesired food, objects, actions or activities and take turns. In the Symbol Use subdomain, Student's relative strength included the ability to spontaneously imitate familiar actions or words after a model, conventionally use familiar objects, and use and respond to a variety of words. Student's emerging joint attention skills included engaging in reciprocal interactions with others, greeting and sharing interest in interacting with others, commenting on actions and events, and attempting to repeat language when not understood. Student uses gestures to share intentions and understands a variety of words without contextual cues in a familiar setting. (PD 208-230, SD 204-233)

33. In the Emotional Regulation domain, Mutual Regulation subdomain, Student's relative strength includes his ability to respond to a variety of words and phrases, remove himself from dysregulating situations and use behavioral strategies to regulate himself. Student can use language strategies to support his regulation, with modeling and support. In the subdomain of Self-Regulation, Student's relative strength is his ability to express and share emotions, protest when distressed and made choices when offered by partner. He had emerging skills in using language to request a break, sharing positive emotion, responding to assistance offered by partners and recovering from dysregulation with a partner's support. (PD 200-201)

34. Student's IEP contained goals for writing(addressing legible words within boundaries), self-care (addressing independence and clothing management), reading

comprehension (addressing ‘wh’ questions), sitting balance (addressing core muscle strength, balance and clothing management), social (addressing his communication and social relationship needs), math (addressing concepts of 1:1 correspondence, quantity, value and sets, i.e. groups), expressive language (addressing increase complexity of utterances, asking questions a self-advocacy skill), object control and locomotor . The IEP provided for these special education and related services to be delivered in the GIP at WES. (PD 157-207, SD 347-411)

35. On February 3, 2015, Student’s annual review of the 3<sup>rd</sup> grade IEP was completed and the 4<sup>th</sup> grade IEP (which would carry over into the fall of 2015 Student’s 5<sup>th</sup> grade school year) was developed. (PD 208-230, 380-390, SD 204-233, 347-411)

36. Student met criteria on five of eight goals. In the three goals that he did not meet the annual goal and benchmarks (writing, school routines, and math) Student met three of the four benchmarks but was not able to demonstrate 80% accuracy on the fourth benchmark for two areas and was not able to consistently pack his backpack at the end to the school day at the level of independence required by the final benchmark. The progress reports indicate that progress was made toward achieving each unmet goal and the service providers confirmed the accuracy of these statements. (Testimony, M. S., M.D., PD 380-390, SD 234-244)

37. From the middle of third grade to the fourth grade IEP meeting, Student was reported to have made tremendous growth in his behavior, transitions, attention and completion of academic tasks, showing improvement in many academic, functional and life skills, including writing, zipping skills, increased speech fluency, lengthening text with “wh” questions, gaining attention to request and asking for help. (Testimony, M. S., PD 211)

38. At the beginning of the 2014-2015 (4<sup>th</sup> grade) school year, Student exhibited difficulty in attending to tasks, protest and refusal to engage in non-preferred tasks, difficult transitioning between tasks and within the school building, was easily frustrated and would bang his head when frustrated, had a low level of group participation and task completion. (Testimony, M.S., L.G. and M.D.)

39. Student enjoyed playing and interacting with peers in a structure setting during his 4<sup>th</sup> grade year. As the year progressed, Student was able to independently take turns and seeks others to engage in familiar games. Student used appropriate social language in group and individual settings with modeling and prompting. When given multiple verbal and visual prompts, Student was able to complete a series of communicative statements in a job context. Student was able to gain attention of others using appropriate proximity and calling person by name to gain access to an item, if motivated to do so. (Testimony, L.G., PD 212)

40. In 4<sup>th</sup> grade, Student required verbal, gestural, and visual prompting to make a choice between two non-preferred activities. He frequently required multiple representations of the task before he was able to make and engage in one task to gain access to a preferred activity. (PD 220)

41. At that time, Student's academic and functional needs were identified as writing legibility, protesting some routines (such as getting off the bus), academics within the real world context, independent daily living skills, telling time related to his school schedule, asking questions to gain information . (PD 208-230, PD 204-233)

42. Student was functional in school related to physical therapy needs and had met his PT goal. Parents requested core strengthening and balance be addressed at school. the team agreed to add physical therapy services to the IEP plan, not as a goal ( because

there was no educational related need), but as a physical therapy plan addressing core strengthening and balance. (Testimony, S.J. , Dr. C. R., PD 208-230, PD 204-233)

43. Student's needs were reported to be independent functioning (complete tasks with decreased verbal and gestural prompts), reading comprehension (improve vocabulary), math (increase accuracy in addition ), social communication (greet, make requests and close conversations independently), emotional regulation (requires multiple verbal, gestural, and visual prompts to select and engage in non-preferred activities), speech language (requires verbal prompts and visual supports to ask questions to gain information), adapted physical education (increase accuracy in completion object control and locomotor activities).

44. Student's IEP contained goals independent functioning (completing steps of a mastered task with no more than 1 gestural prompt per step), reading comprehension (cloze activity), math (addition to 10), social communication (complete a job requiring a greeting), emotional regulation (choosing between non-preferred activities and completing to gain access to preferred activity), and speech language (asking "wh" questions. Student was also provided the "supports" and supplementary aids, accommodations and modifications he needed, such as supports and schedules, models and cues for social interactions, social stories, low key praising, quiet time, sensory breaks, in addition to the structure and support of the GIP program and team. (PD 208-230, SD 204-347-411)

45. Student's IEP did not provide for direct social work or school psychologist services because the team agreed that these services needed to be built into the GIP program for Student. Student's social/emotional needs and goals needed to be worked on throughout the school day by all team members. The school psychologist and social

worker provided group services in a social skills group. In this group Student worked on zones of regulation (pairing colors with concepts), including the teaching of emotions and coping skills, relaxation techniques, social strategies and stories. The school psychologist and social worker were members of Student's GIP team and provide the needed social/emotional services within the program, a minimum of 90 mpw of group as a program component and participated in the planning and assessment of his progress toward obtaining those goals. (Testimony, L. G.) Student made progress on 4<sup>th</sup> grade social communication goal concerning asking for help, but did not obtain the required level of accuracy with the required minimum level of prompting support. (SD 239-240)

46. In fourth grade, Student was demonstrating leadership in group activities by following directions, getting class materials, being engaged in group activities and answering questions. (Testimony, N.E.)

47. Student was not observed by his former teacher or the principal to have behavioral problems resulting in his dropping to the floor during fourth grade. (Testimony, N.E., and E.B.)

48. In 4<sup>th</sup> grade, Student's speech and language needs were identified in the areas of articulation, receptive and expressive language, and pragmatic or social language, significantly delayed as compared to his age peers. School services in speech language are not based on the medical model that focuses on remediation of deficits, but on functional skill development. (Testimony, K.L.)

49. Student's articulation skill deficits negatively impact his overall intelligibility, fair to poor in known context and poor in an unknown context. Student's articulation errors include sound substitutions in all positions and dysfluencies. Student's speech is

affected by his oral motor structural and functional mechanism. He presents with a resting open mouth posture and low muscle tone in the oral musculature. He exhibits poor lip pressure and reduced lip strength, stability and mobility. Student's vocal quality is hyponasal and he has low vocal intensity and loudness. (Testimony, K.L., PD 190-205)

50. Student's receptive and expressive language is characterized by short simple utterances, limited vocabulary, limited knowledge of linguistic concepts that result in difficulty following directions, understanding questions, limited utterance length and complexity. In addition, Student's pragmatic skills are weak in self-advocacy and using appropriate means to gain attention. (PD 190-205)

51. Student is observed to process written language better than spoken language. The demands of spoken language are somewhat dysregulating for Student. (Testimony, K.L.)

52. Student benefits from peer language modeling during general education and peer buddy time at school. (Testimony, K.L.)

53. Student received 120 mpw of direct speech language services (the maximum recommended) in the GIP in individual and group settings. Student's IEP team agreed that Student needed this level of support to benefit from his education and to meet his needs. Student's goals were to increase his expressive and pragmatic language by using a social script to complete a job requiring a greeting, request and ending with no more than one gestural prompt and to ask a "wh" question to complete a routine activity.

54. Student made progress on his 4<sup>th</sup> grade speech language goals by February, 2015 (SD 121)

55. In addition to speech language goals, Student received support from the speech language therapist in the areas of articulation support, following directions, answering questions and independence. (Testimony, K.L.)

56. Student was not provided with an articulation goal because research does not support the effectiveness of oral motor exercises for improving speech production. Given Student's oral muscle weaknesses and oral structural deficits (high palate (PD 191), K.L. does not believe Student would benefit from articulation remediation at this time. (Testimony, K.L.)

57. The occupational therapy report contained within the tri-annual evaluation indicated that Student had deficits in fine motor and self-care that required OT services. Student was able to complete all the steps of his daily entrance and exit routines, but did not consistently execute them, in part because he was not engaged with his educational environment and in part due to lack of skill development. Student needed further skill development in clothing management, especially managing his coat sleeves and zipping, and shoes. Student was able to manage his clothing during his toileting routine, but needed verbal and gestural support for the handwashing routine. Student demonstrated gains in his lunch routines, eating with quiet hands, opening most containers (difficulty with foil bags) but at times struggled to apply enough force to open chip bags. Student is unable to manage buttons and did not appear interested in the task. (PD 190-205)

58. Student worked on writing within boundaries to form letters, upper and lower case, and words. Use of larger boundary spaces with Student encouraged him to use large motor patterns resulting in the distortion of letters. (Testimony, C.M., M.D., PD 109-205)

59. Student is resistant to correction of his writing. Words are more meaningful to Student than letters in isolation and the act of writing letters appeared to be relaxing to him. Student took a long time to adapt to new skills. (Testimony, C.M., PD 190-205)

60. It was recommended that Student develop consistency in the application of skills in this area before embarking on the development of a new set of independence tasks. In 4<sup>th</sup> grade, Student was to receive 30mpw of OT service in the ELS classroom. No goals were written as OT goals, there was an independent functioning goal concerning work stations and task completion with decreasing verbal and gestural prompts. (SD 204-233)

61. Physical Therapy (PT) services are designed to address deficits in movement and function, neuromuscular and structural, motor and visual motor, and positioning needs for students to enable them to benefit from education and access the school environment. (Testimony, S.J.)

62. Student presented with deficits in movement, mobility, posture and sitting, navigation and motor planning when compared to his age peers. Assessments of Student noted these deficits in detail. (Testimony, S.J., PD 190-205)

63. By the time of the 4<sup>th</sup> grade IEP meeting, Student had met his IEP goals and was able to walk throughout his school environment without supervision (other than to assure that he reached his intended destination), was able to move on and off classroom furniture independently and sit with adequate posture during classroom academic tasks, despite weakness of his core musculature and weak lower extremity muscle tone. (Testimony, S.J., PD 208-230)

64. Parents asked for PT services to address the core weakness and flexibility that impacted Student's ability to dress independently at home. A PT plan was developed

even after the PT recommended discontinuing PT service due Student not demonstrating an educational need for PT services. The plan provided for direct service from the physical therapist once per week and daily stretching routine in the classroom under the supervision of the GIP team. (Testimony, S.J., PD 208-230)

65. Student was provided PT services during 4<sup>th</sup> grade in the form of a physical therapy plan. The PT plan was developed to increase Student's strength, flexibility, and balance for greater independence in dressing activities. (PD 208-230)

#### **5<sup>TH</sup> GRADE 2015-2016 SCHOOL YEAR**

66. On January 20, 2016, Student's annual review of the 4<sup>th</sup> grade IEP was completed and the 5<sup>th</sup> grade IEP (which would carry over into the fall of 2016 Student's 6<sup>th</sup> grade school year) was developed. (PD 231-257, SD 113-147, 205-211)

67. Student's progress on the 4<sup>th</sup>/5<sup>th</sup> grade goals was reviewed. Student met the criteria of the independent functioning, reading, math, social communication, and speech/language goals. Student did not meet the goals for emotional regulation and APE. It was reported that these skills were emerging and that student was not able to complete required benchmarks at the required levels due to the need for more prompting than allowed under the goal in the emotional regulation goal or for the APE unless the iPad was used as a motivator. (SD 116-122)

68. In January, 2016, Student's needs were identified as requiring support in social awareness and peer relationships, work refusal and limit testing, generalization of skills, expanding language, money concepts and other basics, needs to increase functional vocabulary and fine motor skills (handwriting and cutting). (PD 231-257, SD 113-147)

69. At that time, based on the annual review of the IEP and the tri-annual re-evaluation and eligibility determination, Student was identified being unable to access the general education curriculum due to his disability and needing an educational and life skills program to provide modeling, prompting, visual supports, additional processing time, structure and predictability. Student required language rich enrichment that provided visual support and an adapted curriculum with OT, and speech and language therapy services to meet his educational needs. (PD 231-257, SD 113-147)

70. The IEP developed on January 20, 2016 contained goals in the areas of APE (to complete APE tasks with visual support only), fine motor (package assembly with no more than one verbal and one gestural cue per item), functional vocabulary (identifying community signs, the function and actions required when encountering sign), emotional regulation (identify feeling during dysregulation and engage in coping strategy), math(identify ability to purchase items up to \$10 with dollar bills), and functional communication (complete job requiring greeting, statement, ask question to gain information and closing with no more than one gestural prompt). Student was also provided the “supports” and supplementary aids, accommodations and modifications he needed, such as supports and schedules, models and cues for social interactions, social stories, low key praising, quiet time, sensory breaks, in addition to the structure and support of the GIP program and team. (PD 231-257, SD 113-147)

71. At the end of the 2015-2016 school years, Student had made significant improvements in his school behaviors, increasing his attention to tasks, engaging in non-preferred tasks, transitioning between tasks and moving about the school with minimal support (primarily supervision for safety reasons), was not experiencing

frequent periods of emotional dysregulation at school. (Testimony M. S., M. D., K. L., E. B. and Dr. J. M.) Video recording submitted by Parents and District show Student using written and visual schedules to perform multi-step tasks and participation in group activities demonstrating his use of basic knowledge, attention, social and communication skills. (SD Exhibit 29)

72. Student's related service needs were identified as Adapted PE, OT, Speech/Language therapy and counseling services. His needs in related service areas were defined as need for social awareness and peer relationships, generalization of skills across settings, need to expand language, fine motor skills (cutting, coloring) and mastery of handwriting. (PD 231-257, SD 113-147)

73. Student met his goals from the previous year; independent functioning, reading math, social communication, speech and language and APE. His skills were emerging on the emotional regulation goal. (PD 231-257, SD 113-147)

74. The following Related Service goals for Student were proposed at the January 20, 2016 IEP meeting: 1) OT to assemble packages with expansion to include delivery of assembled packages, 2) Emotional regulation: identify what he is feeling with increasing accuracy and choose a strategy to help regulate him, 3) Student will complete a job using a greeting, statement, question, and a closing. (PD 234)

75. Physical therapy minutes would be reduced and moved to consultation for 30 minutes per trimester with educational team to monitor daily exercise program. (PD 235, 252)

76. Physical therapist, Dr. C.R., reported that Student walks through the school environment with assistance to assure his arrival. His gait and range of motion has increased due to his use of FMO, but he is unable to putting them on. He uses an

alternating foot pattern ascending and descending stairs without the use of a handrail. He moves from the floor through a half-kneeling position. He moves off and on classroom furniture. Student has low-normal muscle tone throughout his trunk with mild weakness in core strength. (PD 238)

77. Other related services would be delivered as follows: 1) APE 60 mpw, 2) OT 30 mpw, 4) Speech/Language 120 mpw, and 5) counseling services 30 mpw.

78. On April 14, 2016, the IEP team reconvened to consider Parent's outside evaluation and the recommendations contained therein and were given a letter from Dr. O.K. to supplement the report, including a request for therapeutic day school placement. (PD 258- 304)

79. The IEP team provided draft goals that included revisions including the addition of PT as a related service for 20 mpw based their review of Dr. O.K's report. These draft goals were provided to the parents in advance of the meeting, but were never discussed at the meeting. (Testimony, M.S., R.F., Dr. J.M., M.D., K.L., K.E.,

80. The IEP team reported that Student was meeting his benchmarks on the current goals and was demonstrating progress in school. (PD 258- 304)

81. The District tried to discuss the Dr. O.K. report and IEP revisions that they were suggesting after reviewing the report. The April 14, 2016 meeting broke down and did not result in a revision of goals for Student or a change of placement. (PD 304)

82. Dr. OK, a licensed clinical psychologist, completed a psychological evaluation of Student, utilizing a multi-disciplinary model, which was conducted between November and December 2015. (Testimony, Dr. OK, PD 614-618, 449-460)

83. Student meets the diagnostic criteria for an Intellectual Disability, Mild to Moderate and for Autism Spectrum Disorder. (Testimony Dr. O.K., PD 449-460)

84 Dr. OK's assessment of Student included the administration of the Comprehensive Test of Nonverbal Intelligence-2<sup>nd</sup> Edition (CTONI-2), the Peabody Picture Vocabulary Test – 4<sup>th</sup> Edition, the Expressive Vocabulary Test- 2<sup>nd</sup> Edition, the Berry Developmental Test of Visual-Motor Integration-6<sup>th</sup> Edition, Bracken Basic Concepts- 3<sup>rd</sup> Edition, Test of Early Mathematics- 3<sup>rd</sup> Edition, Test of Early Reading- 3<sup>rd</sup> Edition, Vineland Adaptive Behavior Scales- 2<sup>nd</sup> Edition: Interview, and Achenbach Teacher's Report Form to Student at the request of Parents. Dr. OK's assessments indicated that Student performed in the impaired range in the areas of intellectual functioning, receptive vocabulary, and expressive vocabulary. Student's overall adaptive behavior fell in the low range in all normed domains (communication, daily living skills, and socialization skills) and his gross motor skills in the moderately low range and fine motor skills in the low range, as reported by his mother on the Vineland. Student's performance on pre-academic concepts "appeared to be consistent with an approximate five years age expectancy." Student's understanding of direction and position, time and sequence, consistent with a three (3) year old age expectancy, while his social understanding appears to be closer to that of a four-year old. These are consistent with his overall intellectual functioning.

#### Academic

85. The 2015 private evaluation of academic skills of Student, completed by included the Bracken Basic Concept Scale-3<sup>rd</sup> Edition, Receptive (BBCS-3:R) , Test of Early Mathematics Ability-3<sup>rd</sup> Edition, Test of Early Reading Ability-3<sup>rd</sup> Edition (TERA-#3) Form A, three measures of academic achievement. Student's School Readiness

Composite on the BBCS-3:R was expressed as an age equivalent of 4-10. Dr. OK noted that Student's performance on pre-academic concepts appeared to be consistent with approximate age expectancy of five years. Student's understanding of concepts related to direction, position, texture, time, sequence, and material appeared to be consistent with an age expectancy of three years. Student's social understanding appears to be closer to that of a four year old. (PD 449-406)

86. Student's overall adaptive functioning falls within the low range. Student has limited communication skills, safety awareness, social awareness, and daily living activities. Student requires a high level of support with the home and school environment. (Testimony, Dr. OK, PD 449-460)

87. Student's cognitive or intellectual functioning as measured by standardized assessments is estimated to be in the moderately impaired range. Student showed evenly developed reasoning skills. Student has significant weakness in his reasoning skills, learning and memory, receptive and expressive vocabulary, and language skills. He has difficulty with abstract items. Student has difficulty following verbally presented directions which interferes with his ability to complete tasks. (Testimony, L.G., Dr. O.K., PD 192, 452, 454, 545, SD 388, 179, 181)

88. Student has extremely low academic achievement. Student has difficulty initiating and staying on tasks which negatively impacts his performance on assessments, formal and informal. (Testimony, Dr. OK, PD 449-460, )

89. Student continues to need an academic and functional skills program to provide modeling, prompting, visual supports, additional processing time, structure and predictability. Student requires a language rich enrichment that provides visual support

and an adapted curriculum with OT, and speech and language therapy services to meet his educational needs. (Testimony, Dr. O.K., PD 449-460)

### Speech and Language

90. Student's receptive and expressive vocabulary skills are in the impaired range and well below average when compared to his peers. (PD 452)

91. Student is inconsistent when answering "wh" questions. Student demonstrates the ability to answer "wh" questions directly related to pictures, but is not able to answer these questions in relation to himself or his experiences. (PD 606, 198, SD 394, )

92. Student's speech intelligibility to an unfamiliar language partner is negatively impacted by his inconsistent sound distortions, substitutions, and omissions. (PD 606, 198-199, SD 394-35) 34. Student's speech intelligibility is negatively impacted by his inadequate oral motor structure and function (range of motion and strength), including a resting open mouth posture and low muscle tone in oral musculature, exhibiting poor lip pressure and reduced lip strength, stability and mobility. (PD 199, 606, SD 395)

93. Student has difficulty with conversation. He is limited in both initiating and maintaining conversation and eye contact. (PD 607, 198, SD 394)

94. Student is able to respond to social greetings, and engage in one exchange during conversation, and is weak in self-advocacy skills. Student frequently waits rather than asking for help. Student uses verbal language to request items, state needs, and in instructional settings, special and general education, with adults and peer buddies.

(Testimony, K. L., L.G., M. S., K.T., E.B., J.M., PD 198, SD 384)

95. Student's current language needs include vocabulary development, linguistic concepts , following directions, understanding and answering questions, and increasing

utterance length and complexity, self-advocacy skills and conversational skills. (PD 204, 607, SD 400)

Adaptive Functioning: Fine Motor and Self-Care

96. Student's adaptive functioning is within the low to moderately low range. He has limited communication skills, safety awareness, social awareness, and daily living skills.

97. Student has low muscle tone throughout his upper extremities. (Testimony M.D., PD 196, 238, 453 , SD 392, 180 )

98. Student is capable of performing most steps of his entry routine and understands the process. Student has difficulty completing some motor tasks independently, such as putting on his coat when the sleeve are inside out, zipping a separating zipper, putting on his shoes. (PD 194, SD 390) Student is able to don and doff socks.

99. Student dresses himself adequately. (Testimony, M.D., PD 611) Student is capable of clothing management and hand washing during his toileting routine. (PD 194, SD 390) Student eats independently, but needs assistance opening some containers, especially foil bags. (PD 194, 611, SD 390) Student does not have the motor coordination needed to manipulate shoe laces. (Testimony, M.D., PD 611)

100.. Student can form all upper and lower case letters and print words that are recognizable. Student needs to develop smaller motor patterns and writing letters within small (one inch square) boundaries. ( PD 194, SD 390)

101. Student's writing is generally legible during familiar tasks, but it is still readable during unfamiliar tasks.

102. Student uses a four finger grasp until corrected. When corrected he is able to use a tripod grasp until he sets down the writing tool. (PD 195, 6101 SD 391)

103. Student likely has visual processing delays, but due to problems with attention and focus visual processing assessment could not be completed. (PD 611)

104. Student has difficulty accessing and adjusting motor planning to new activities. (Testimony, E.K., )

#### Physical therapy and Adapted Physical Education

105. Student has deficits in movement and mobility, posture and sitting, navigation, and motor planning compared to his age peers. (Testimony, S. J., Dr. C. R.)

106. Student is able to walk without assistance and is able to physically navigate the school building and playground. Student's decreased heel strike bilaterally does not limit Student's ability to move or impact his balance. (Testimony, S. J., PD 201, 610,

107. Student does not have difficulty sitting, has a mild round back position, and has adequate balance and reactive reflexes to correct. (Testimony, S. J., PD 201, 610,

108. Student wears ankle orthotics. (PD 610)

109. Student has shortened hamstring

110. Student grew significantly over the past two (2) years. (Testimony, E. K.,

111. Children's growth impacts muscles and joints and the ability to move. (Testimony E. K., S.J., )

102. Low muscle tone is a neurological issue and cannot be changed through therapy. (Testimony S.J, C. M.,

#### CMS

103. The CMS GIP is a District self-contained classroom program that utilizes a multi-disciplinary team teaching approach to provide middle school students with disabilities with special education and related service through 1:1 and group instruction in an separate and inclusive setting. CMS GIP students receive the services and special

education instruction implementing ABA and TEACH methodologies as required by their IEPs and are involved in community and general education learning experiences to facilitate language and social development. GIP students at CMS have are involved in inclusion activities including peer buddies and elective classes two (2 )periods each day. (Testimony K.E., SD 549-551)

### CCDS

104. CCDS is an ISBE approved therapeutic day school. The student population is currently 18 students. CCDS employs a full time OT, two full time Speech Language pathologists (one is AT specialist) a full-time social worker, three certified special education teachers, a part-time physical therapist and paraprofessionals.

105. Student schedules are 30 minute blocks. Students receive direct services from teachers and related service providers 2-3 times per week and assistants provide practice with the student the other days. Students receive their services and instruction daily.

106. Academic blocks include reading, math and writing. Students receive direct 1:1 instruction until they acquire the requisite skills to participate in groups.

107. CCDS does not use ABA or TEACH. (PD 265)

### **CONCLUSIONS OF LAW**

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:

Under the IDEA, the party initiating the proceeding bears the burden of persuasion.<sup>1</sup> Illinois law requires the school district to present evidence that the special

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<sup>1</sup> *Marshal Joint Sch. Disr.no. 2 v. C.D. ex rel. Brain D.*, 616 F.3d 362. (7<sup>th</sup> Cir. 2010) and *Schaffer v. Weast*, 546 U.S. 49(2005).

education needs of the child were appropriately identified and the special education program and related services proposed are adequate, appropriate and available to meet the needs of the child, that is providing or has offered those services in the least restrictive environment, consistent with procedural safeguards and in accordance with an Individualized Educational Program (IEP).<sup>2</sup>

**Issue One:**

**Did educational placement of Student in District's Guided Learning Program for Student's 2014-2015, 4<sup>th</sup> Grade School Year and/or 2015-2016, 5<sup>th</sup> Grade School Year, result in the denial of a free appropriate public education (herein, "FAPE") to Student?**

**FAPE**

The IDEA ensures that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs."<sup>3</sup> FAPE is defined as special education or related services that are provided at public expense, meet the standards of the state, include preschool, elementary, or secondary school and are provided in conformity with an Individualized Education Program (IEP) that meets the requirements of 34 C.R.F. §§ 300.320-324.<sup>4</sup> The IEP, not the specific placement is the "primary vehicle" through which a District must implement the FAPE requirement of IDEA.<sup>5</sup>

Parents contend that District failed to provide the Student with the special education and related services in the GIP, specifically that Student failed to make "substantial/meaningful" educational progress during his 4<sup>th</sup> and 5<sup>th</sup> grade school years (2014-2015 and 2015-2016 school years), and academic instruction given to him during these years was not appropriate to meet Student's individualized needs. Parents did not bring any procedural challenges in their due process complaint. District asserts that it provided Student with a FAPE through the provision of special education and related service as contained in the 2014-2015 and 2015-2016 IEPs.

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<sup>2</sup> 105 ILCS 5/14-8.02(a)(g-55).

<sup>3</sup> 20 U.S.C. 1400(d)(1)(A) and *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982).

<sup>4</sup> 34 C.F.R. 300.17.

<sup>5</sup> *Honing v. Doe*, 484 U.S. 305, 310 (1988).

## INDIVIDUALIZED EDUCATIONAL PROGRAM (IEP)

The IDEA defines an IEP as “a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 34 C.F.R. 300.320 through 34 C.F.R. 300.324.”<sup>6</sup> In addition to other requirements, an IEP must include a statement of the child’s present levels of academic achievement and functional performance, articulate measureable educational goals, including academic and functional goals designed to meet the child’s needs that result from the child’s disability, and specify the nature of the special service that the district will provide.<sup>7</sup> An IEP must be tailored to the unique needs of that particular child.<sup>8</sup> “An IEP must respond to all significant facets of the student’s disability, both academic and behavioral” to meet the substantive criterion of *Rowley*.<sup>9</sup>

The questions are whether the District was unreasonable in its development and implementation of Student’s IEP<sup>10</sup> and whether the IEP it developed and implemented for Student was appropriate to meet his needs. The IDEA does not provide a separate definition for “appropriate.”<sup>11</sup> The IEP must be reasonably calculated to provide more than trivial educational benefits and “likely to produce progress, not regression.”<sup>12</sup> The 7<sup>th</sup> Circuit has expressly rejected the “substantial or meaningful progress” test that other circuits use and has held that a student who makes some or more than just trivial progress has received a FAPE.<sup>13</sup> “Factors to consider in making such a determination include: ‘(1) the child’s potential; (2) whether his IEPs were tailored to his unique needs; (3) whether his IEPs provided access to specialized services; (4) whether they addressed disability-related disruptive acts; and (5) whether the child achieved progress during the relevant time period.’”<sup>14</sup>

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<sup>6</sup> 34 C.F.R. 300.22.

<sup>7</sup> 34 C.F.R.300.22 and 34 C.F.R. 300.320(a).

<sup>8</sup> *Bd. of Educ. v. Rowley*, 458 U.S.at 81.

<sup>9</sup> *Alex R v. Forrestville Valley School*, 375 F.3d 603 (7<sup>th</sup> Cir. 2004).

<sup>10</sup> *Alex R v. Forrestville Valley School*, at 610.

<sup>11</sup> *See 20 U.S.C. §1401*.

<sup>12</sup> *Alex R. v. Forestville Valley County Sch. Dist.*, 375 F.3d 603, 41 IDELR 146 (7<sup>th</sup> Cir. 2004).

<sup>13</sup> *Todd v. Duneland Sch. Corp.*,299 F.3d. 899,

<sup>14</sup> *Brad K. at 739*, quoting *Jaccari J. v. Board of Education of City of Chicago, District No. 299*, 690 F. Supp.2d. 687, 701-02 (N.D.Ill. 2010).

### STUDENT'S POTENTIAL

Student exhibits autism and moderately impaired intellectual functioning. His cognitive functioning is well below age expectation in all areas and domains as measured on multiple assessments over many years. Student is also significantly delayed in the areas of receptive and expressive vocabulary, communication, fine and gross motor and social/emotional development. Between Kindergarten and third grade Student made slow but steady progress in acquiring language, social/emotional, gross and fine motor, and academic skills. Parents and District presented evidence that between Kindergarten and third grade Student progressed from being unable to disembark from the bus or move through the school environment with high levels of adult support (prompting and supervision) without experiencing high levels of emotional dysregulation resulting in screaming, kicking, striking, dropping to the floor and other "behaviors" to a student who was frequently able to disembark from the bus, walk through the school to his cubby and complete most of his entrance routine with much less adult support and prompting and that Student was beginning to acquire basic language concepts and emergent reading and math skills. The evidence presented shows Student is capable of making slow and steady progress in all domains.

### WERE IEPs TAILORED TO STUDENT'S UNIQUE NEEDS?

"An IEP must respond to all significant facets of the student's disability, both academic and behavioral."<sup>15</sup> As stated above, Student has significant delays in the areas of receptive and expressive vocabulary, communication, fine and gross motor and social/emotional development when compared to his age peers. Student's needs were identified by the District's triannual evaluation completed in February of 2014 and by his present levels of performance.

During the relevant period, the 2014-2015 and 2015-2016 school years, the IEPs contained academic (reading and math), fine motor (handwriting), speech and language, gross motor, functional independence and adapted physical education goals. Each of these goals addressed a then current need of Student. Student's IEP teams developed IEP goals and benchmarks for Student addressed what were determined to be

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<sup>15</sup> *Alex R. ex rel. Beth R. v. Forrestville Valley Community Unit School District no. 221*, 375 F.3d 603, 613(7<sup>th</sup> Cir. 2004).

his highest needs related to education. (Testimony, M. S., K. L., M.D., Dr. C.R.) The evidence presented in this matter shows that the 2014-2015 and 2015-2016 school years, IEPs contained goals and benchmarks to address the highest need of Student each area his need.

#### DID DISTRICT PROVIDE APPROPRIATE INSTRUCTION TO STUDENT?

School districts must develop IEPs that provides a student with disabilities specially designed instruction that meet his or her needs”<sup>16</sup> Failure to do so would result in the denial of a FAPE to the student.

Multiple witnesses testified to Student’s need for language-based, highly structured, adapted academic program that incorporates 1:1 direct and small group instruction. Student continues to need an academic and functional skills instruction that provides modeling, prompting, visual supports, additional processing time, structure and predictability to address Student’s educational needs. Dr. O.K. recommended specific methodologies, TEACH and ABA, should be incorporated into Student’s academic instruction. (Testimony, Dr. O.K., PD 449-460, SD 176-460)

#### DID IEPS PROVIDE ACCESS TO NEEDED SPECIAL SERVICES?

Student’s IEPs covering the 2014-2015 and 2015-2016 school years all provided for Student to receive education in WES in the GIP program and general education setting with the support of the GIP team. The testimony of Student’s team in the GIP program supports the assertion that student was provided with the structure and support he needed to learn and progress in a small classroom using a transdisciplinary mode in an inclusive school model.

Student’s GIP team provided him with intensive support and direct instruction in areas of social and interpersonal skills, communication, behavior, academics and functional life skills in addition to providing the special education and related services required by his IEP in a language-enriched environment utilizing a combination of 1:1 direct instruction/service, small group and inclusion settings. Team members testified that they implement best practices in their fields with Student and are trained in and

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<sup>16</sup> *Letter to Chambers*, 59 IDELR 170 (OSEP 2012)

implement models such as ABA, TEACH and SCERTS. The record supports the District's assertion that Student had access to and received all special education and related services required under his IEPs during the 2014-2015 and 2015-2016 school year periods.

Parents did not provide evidence that instruction was not appropriate or that other methods were recommended at the time or that method used were not effective in enabling Student to receive educational benefits and progress. In fact, evidence shows that instruction as implemented using the methodologies and techniques contained in Dr. O K.'s 2016 evaluation recommendations.

#### DID IEPs ADDRESS STUDENT'S DISABILITY-RELATED DISRUPTIVE ACTS

Evidence presented showed that Student's behavior markedly improved during the 2014-2015 and 2015-2016 school years. Student behavior and emotional regulation was addressed in his IEPs through a behavior support plan in the 3<sup>rd</sup>/4<sup>th</sup> grade IEP and through Emotional Regulation goals in the 4<sup>th</sup>/5<sup>th</sup> and 5<sup>th</sup> /6<sup>th</sup> grade IEPs. (PD 189, 220, and 245). Student's behavior improved markedly during this period.

#### DID STUDENT MAKE PROGRESS?

Parents argue that Student failed to make progress on his IEP goals during the 2014-2015 and 2015-2016 school years. Parents argue Student failed to meet all goals and therefore did not make progress during this time period. Progress monitoring and data collection occurred for these areas and was reported in IEP progress notes. The educational opportunities and monitoring of his progression in the acquisition of skills was not limited to the scope of the IEP goals. Student was provided with other instruction and opportunities to acquire new language, information and skills as evidenced by reports of other academic, language, motor skill and behavioral progress contained in the present levels of performance in each of the IEPs during this period. (PD 208-304) In fact, review of IEP progress notes demonstrate that Student met the majority of his IEP goals during that period and additional evidence supported that Student was making progress toward the meeting of the other goals, but not at the rate originally anticipated during the development of the IEP, but progress nonetheless. The

undersigned IHO must give deference to the opinions of professional educators in regards to educational issues.<sup>17</sup>

Parents relied on the testimony and demonstrative evidence produced by K. P., a private behavioral analyst (PD 619), who has been working with Student on behavior and regulation for at least a year and is currently working on attention, focus and transitions. (Testimony, K. P.) K. P. was asked to “progress monitor” the goals. K. P. conducted assessments of Student in June and July of 2016, to review overall functioning, look at past IEPs and determine if current function matched progress reported and retention of skills. K.P. called her assessments “progress monitoring.” The “progress monitoring” consisted of informal assessment of Student’s performance on IEP goals and benchmarks contained in his Kindergarten IEP. The “progress monitoring” completed purported to assess the Student’s mastery of the Kindergarten through third grade goals in fine motor (copying prewriting shapes and letters of the alphabet, print all upper and lower case letters, print letters in 1.5 in boxes, ) gross motor (jump with two foot take off, rise from floor half kneeling without hand support, walking a floor based balance beam, and sit on floor with upright posture, put shoes on while seated), expressive and receptive language (in, out, on, under and describe two-actions in a pictures, ask what and where questions, use sentences with attributes or locations, get attention for wants and needs and 2-3 word utterances), reciprocal play (shift gaze form object to person), reading comprehension (what and who questions after reading, who, what and where questions), and math computation (addition problems with sets using 1:1 correspondence). Fourth and fifth grade goals were not measured because the goals take place in a school setting. (Testimony, K. P.) Representative samples of these trials and introductory presentations were videotaped by Parents’ attorney and were presented during the hearing. (Testimony, K. P., Parent’s flash drive # 2, 3, 4, 8A, 13, 15, 19, 20, 22, 23, 28, 32, 33, 36, 37, 41, 45, 50, 56, 57, 58, 59, PD 486-508, 509-514, 515-518, 519-521, 522, 523-528, 529-532, 533-536, 537-543, 544-553, and 555-557) The results were not used to develop programing for Student. K. P. knew this could be used in the due process hearing. (Testimony, K. P.)

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<sup>17</sup> *Heather S. v. State of Wis.*, 125 F.3d 1045, 1057 (7<sup>th</sup> Cir. 1997).

Student was unable to demonstrate mastery of any of the goals during the trials set up by K. P. K.P. believes that the trials were accurate measures of Student's abilities and progress on the goals based on her experience of working with him for the past year.

District asserts that the videos are attempts to have an autistic child with a limited IQ and speech and motor issue try to perform tasks from goals in effect years ago, with no practice or introduction, during the summer, outside of the school setting, out of context, directed by an adult not familiar with his instructional program or goals and filmed by another adult with whom he is not familiar. During the videos, Student did not appear to understand what to do and became frustrated. Despite his apparent lack of understanding and frustration, the activities continued, contrary to best practices with autistic children and contrary to the testimony of witnesses, including Dr. O.K, that Student will not get close to optimal performance when he is frustrated. (Testimony, Dr. O.K., M.S., M. D., C. M. and K. L.) During the "progress monitoring," Student was not provided with the clear, contextual, concrete directions or with sufficient visuals or wait time for answering. (Testimony, M. S., and K. L.) District contends these videos are irrelevant, unreliable and prejudicial.

The videos and materials developed by K. P. do not support the assertion that Student has failed to make progress toward his IEP goals. First, none of the videos measure the goals at issue in this matter, the 2014-2015 (4<sup>th</sup> grade) and 2015-2016 (5<sup>th</sup> grade) goals. Second, Student progress on an IEP requires an examination of and determination of adequacy as of the time it was offered or the time of implementation and not in hindsight at some later date<sup>18</sup> and the "progress monitoring" was an attempt to examine and determine the adequacy of progress on goal that were well outside of the statute of limitations date, requiring a great deal of hindsight. Finally, the "progress monitoring did not provide the student with meaningful experiences through the use of setting, equipment, materials, supports, familiar language and procedures that would produce meaningful context for Student. They demonstrated the difficulty that Student has in understanding the processing language and social expectations and the completion of tasks he does not understand, and gave the viewer a richer understanding of the impact of Student's autism and cognitive impairment has on his daily life. The

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<sup>18</sup> See *J.G. v. Douglas County Sch. Dist.*, 552 F.3d 786, 801(9<sup>th</sup> Cir. 2008) and *Fuhrmann v East Hanover Bd. of Educ.*, 993 F.2d 1031, 1040 (3<sup>rd</sup> Cir. 1993).

videos and supporting materials do not support Parents contention that Student has not made progress.

Parents also offered the testimony of D. S., teaching assistant for the District at WES for 3 years while Student was in 1<sup>st</sup> and 2<sup>nd</sup> grade and is a private caregiver for Student at the present time. It is D. S.'s opinion that Student has not improved, however she testified that Student's performance of the morning routine in 5<sup>th</sup> grade was more fluid and independent than it was in 2<sup>nd</sup> grade. It is D.S.'s opinion that all students received the same instruction and that the whole program is more like babysitting. D.S. is a teaching assistant, she does not hold teaching credentials. D. S. did not believe that she was trained by the District, and did not recognize as training the student specific training she was given by the ELS team. I find that this witness' testimony lacks credibility. D.S. has motive for bias for the positions of the parents because of her employment by parents as caregiver for Student. D. S. has a limited knowledge base and experience in educational issues related to autism and cognitive impairment.

Parents assert that Students' IEPs were working on the same basic academic and functional concepts year after year. Parents argue Student has been working on the acquisition of many basic and foundational skills over period of many years as measured on standardized evaluations and assessments, and that he did not make progress.

Parents offer in support of these assertion the results of recent Educational Evaluation conducted in June 2016. They contend that Student's failure to meet Common Core Kindergarten and Essential Elements Kindergarten standards for literature, informational text, reading foundation skills, writing, counting and cardinality, operations and algebraic thinking in base ten, measurement and data, geometry is evidence of his failure to progress under the 2014-2015 and 2015-2016 IEPs. (PD 467 – 471) Parents also point to Student's ISEL scores completed in 2011, 2012, and 2013 (PD 404-407) and Fountas and Pinnell Reading Levels (PD 408-427) in support of this assertion. Parents' reliance on these assessments is misplaced as they were completed outside of the statute of limitations period and are relevant to the current matter as historical reference evidence. Parents assert that Student's skills in reading decoding and accuracy was stagnant and that his reading comprehension declined. They offered the results of the Unique Learning System assessments of level 2

book C reading assessments in 4<sup>th</sup> and 5<sup>th</sup> grade in support of this claim. While these assessments seem to demonstrate that Student was stagnant or regressed in reading accuracy and regressed in comprehension, they are only isolated snapshots of Student's performance in reading. Parent pointed to Student's performance on the Fountas and Pinnell assessments as evidence of failure to progress in reading skills. However, in 2014 the District's evaluation of Student's reading skills indicated that he successfully read at Fountas and Pinnell level B with difficulty in answering comprehension questions and extending his responses. (PD 193) Parents' June 2016 Educational Evaluation of Student reported that he was able to read a Fountas and Pinnell level B passage at 90% accuracy and answer comprehension questions with 50% accuracy. This is evidence demonstrating an increase in reading comprehension, the ultimate purpose behind reading. (PD 465) Parents' evaluation also provided evidence that Student has made significant progress in reading. In 2014, Student was demonstrating emerging reading skills, such as print and text awareness, sound symbol association and decoding C-V-C word. (PD 193) In June 2016, Student was also able to read a preprimer paragraph from Ekwall Shanker oral reading assessment accurately. (PD466) Student had developed a sight word vocabulary during this period (2014 to 2016) as demonstrated by his able to read with over 90% accuracy the Dolch pre-primer and primer sight word list and the results of his Brigance Word Recognition Grade Placement test wherein he read 100% of the primer and first grade words, 90% of the second grade word list and 50% of the third grade word lists. In addition, Student was able to match basic functional sight words to pictures with 80% accuracy. (PD 465-466) In addition, Student regularly reads written schedules and mini schedules daily and applies what he has read to complete academic and functional tasks and aid in transitions during the school day. (Testimony M. S., M. D., SD 340, Exhibit 29: S- 's OT Group)

Similarly, the Parents' June 2016 Educational Evaluation provides evidence of Student's progress in the acquisition of Math skills and concepts. For example, in 2014 Student was unable to name 5 of 8 (62.5%) of basic shapes, in 2016 he could name 90% of the basic shapes on the Brigance Basic Skills Inventory. (PD 193, 473) Similarly, he showed improvement in counting objects, building sets to 10, solving simple addition

problems with manipulatives, sort by color and shape and could name and tell the value of four coins. (PD 473-4) The progress in math has been slow and steady.

Parents' 2016 Educational Evaluation shows that Student's writing skills are emerging as he is able to talk about pictures and dictate his ideas to an adult. His spelling skills are emerging at a first grade level. (PD 477)

### CONCLUSION

Student has the potential to make slow and steady progress in keeping with his underlying deficits and significant delays in cognitive functioning, receptive and expressive vocabulary, communication, fine and gross motor and social/emotional development. The 2014-2015 and 2015-2016 IEPs each contained goals designed to address Student's need in each area of need that negatively impacted his ability to benefit from education. All services delineated in the 2014-2015 and 2015-2016 IEPs were provided to Student in the GIP at WES and his disruptive behavior was addressed through a BIP or goals. During the 2014-2015 and 2015-2016 school years, Student made slow, but steady progress in achieving his IEP goals and in his special education program. This conclusion is supported by Parent's private educational evaluation, District's IEP progress reports, the testimony of District teachers and service providers, Parent's psychological evaluation and the Parent's psychologist's testimony Student's overall functioning is consistent with his intellectual functioning or commensurate with his abilities. (Testimony, Dr. OK, LG, PD 454) Neither Student's 2014-2015 (4<sup>th</sup> grade) or his 2015-2016 (6<sup>th</sup> grade) educational placement or the academic instruction that he received in the District's Guided Learning Program resulted in the denial of a free appropriate public education.

### **Issue Two:**

### **Did District fail to provide Student with appropriate Related Services and Service Minutes during his 2014-2015, 4<sup>th</sup> Grade School Year and/or 2015-2016, 5<sup>th</sup> Grade School Year, resulting in a denial of FAPE to Student?**

Parents claim that District failed to provide the Student with the related services, specifically social work/psychology services (4<sup>TH</sup> grade only), the necessary number of

minutes of occupational therapy, and speech and language therapy to enable Student to receive an educational benefit at the level required to under the IDEA during his 2014-2015 (4<sup>th</sup> grade) school year, and 2015-2016 (5<sup>th</sup> grade) school year, and that the removal of physical therapy services in January 2016 was not appropriate to meet his individualized educational needs and resulted in the denial of a FAPE to Student. These claims challenge the 2014-2015 and 2015-2016 IEPs developed for Student by the District, the special education and related services provided to Student by the District during those years and the appropriateness of the 2016-2017 IEP including the prospective placement contained therein. Parent asserts that Student needs related service minutes equal to 30 mpw for each impacted subdomain pursuant to best practice in each field. Parents are seeking direct service on an individual basis with focus on foundational skills, and separate IEP goals for each unique speech/language, OT and PT subdomain of Student deficit.

District defends its IEP as appropriately provided for Student's educational needs through the provision of the type and amount of related services necessary for Student to benefit from education.

IDEA provides that students with disabilities are to receive the related services needed to address their educational needs.<sup>19</sup> Related services are supportive services "required to assist a child with a disability to benefit from special education."<sup>20</sup> Related services and service minutes must be designed to meet the unique need of the Student.<sup>21</sup>

During Student's 2014-2015 (4<sup>th</sup> grade) school year, his IEP states in the need for counseling services based on the 2015 District evaluation to address his emotional regulation needs. The emotional regulation goal was designed to teach the Student to make a choice between two non-preferred activities with supports to gain access to a preferred activity. The goal provided for a high level of support initially and gradually decreased the level of support allowed in the mastery criteria. This goal was directed to Student's resisting and refusal behaviors which interfered with his ability to transition to non-preferred learning activities. The IEP provided for 30mpw of counseling services as a related service to work on this goal. Psychologist, L.G. testified that she provided

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<sup>19</sup> 34 C.F.R. §300.304(c)(6).

<sup>20</sup> 34 C.F.R. §300.34(a).

<sup>21</sup> *Morton Community Unit School Dist. No. 709 v. J.M.*, 152 F.3d 583 (7<sup>th</sup> Cir. 1998).

Student with the counseling services and engaged in progress monitoring of his emotional regulation goal. These services were provided in the classroom and other settings as direct service to Student.

I find that the 4<sup>th</sup> grade emotional regulation goal was appropriate to meet Student's needs at the time, the amount of counseling services provided for in the IEP was appropriate to meet the need and Student was provided with the needed services by the District.

During Student's 2015-2016 (5<sup>th</sup> grade) school year, his IEP mentions in the need for counseling services based on the 2015 District evaluation to address his emotional regulation needs. The emotional regulation goal was designed to teach the Student to identify his feeling using a visual support during a period of dysregulation and then to engage in a coping strategy initiated by himself or an adult. The goal provided for a high level of support initially and gradually decreased the level of support allowed in the mastery criteria. The IEP provided for 30mpw of counseling services as a related service to work on this goal. The school psychologist reported under current level of performance that Student was progressing with this goal and was continuing to work with the non-preferred activities goal that was not carried forward on the IEP. (PD 237) This goal and the support provided in it was appropriate to address Student's identified deficits in targets coping skills as recommended by Dr. O.K.'s report recommended.

I find that the 5<sup>th</sup> grade emotional regulation goal was appropriate to meet Student's needs at the time, the amount of counseling services provided for in the IEP was appropriate to meet the need and Student was provided with the needed services by the District.

#### OCCUPATIONAL THERAPY

During Student's 2014-2015 (4<sup>th</sup> grade) school year, his IEP states need for fine motor and independent functioning based on the 2015 District evaluation to address his fine motor and independent functioning needs with occupational therapy. The OT goal was designed to require Student to utilize the fine motor skills in three mastered tasks to complete these tasks (i.e. staying on task) with less than one gestural prompt per step. The goal provided for decreasing levels of support while increasing the motor planning and implementing demand on Student. This goal was directed to increase Student's

motor planning/executive function and decrease off task and resisting or refusal behaviors which interfered with his ability to remain on task independently in a non-academic task. Parent's private OT evaluation completed in May, 2016 commented about Student's difficulty with initiating and stay with tasks until completion. (PD 611) The IEP provided for 30mpw of counseling services as a related service to work on this goal. OT, M.D. testified that she provided Student with the OT services provided in his IEP and additional OT services as a GIP team member in group setting. These services were provided in the classroom and other settings as direct service to Student.

I find that the 4<sup>th</sup> grade OT goal was appropriate to meet Student's needs at the time as identified by the District and later by Student's private OT, the amount of OT services provided for in the IEP was appropriate to meet the need and Student was provided with the needed services by the District.

During Student's 2015-2016 (5<sup>th</sup> grade) school year, his IEP mentions the need to address his fine motor and independent functioning needs with occupational therapy. The OT goal was designed to increase the motor planning/executive function and use of fine motor skills used by Student to complete his independent center with decreasing levels of support through prompts. Parent's private OT evaluation completed in May, 2016 commented on Student's difficulty with initiating and staying with tasks until completion. (PD 611) The goal provided for a high level of support initially and gradually decreased the level of support allowed in the mastery criteria. The IEP provided for 30mpw of OT services as a related service to work on this goal. M.D., OT testified that she provided these OT services to Student and that she provided additional services and program support to address fine motor and independent function support in the GIP program. In addition, she was a regular service provider for a group. This goal and the support provided in it was appropriate to address Student's identified need to increase fine motor skills and decrease time off task and avoidant behaviors.

Parents argue that Student's deficits (when compared to his peers) in each of the OT subdomains should be addressed with OT therapy goals and 30 mpw of services per goal for a total of 120 mpw of OT services. Parents argue that this is the best practice standard in the field. Parents assert that Student has deficits in fine motor, sensory processing and regulation, self-care (activities of daily living) and independence when compared to his age peers. District argues that this is a medical therapy model which is

not the goal and function of related services under IDEA, which is functional. District asserts that related service goals and associated service minutes are required for deficits that impact function in the school environment and the student's ability to benefit from education. District's understanding of the definition of related services is correct.

The recommendations contained in the Parent's OT evaluation to improve bilateral coordination and bimanual skills are being implemented through the Districts goals above. (PD 610-612) The private OT recommended that games are to be used to allow for good engagement, better skills and increased attention and initiation. The District has developed goals that address the same needs and skill development, they chose to implement these skills in a pre-vocational skills activity rather than a game.

I find that the 5<sup>th</sup> grade OT goal was appropriate to meet Student's needs at the time as identified by the District and Student's Private OT, the amount of OT services provided for in the IEP was appropriate to meet the need and Student was provided with the needed services by the District.

During Student's 2014-2015 (4<sup>th</sup> grade) school year, his IEP indicates his need to improve his expressive and receptive language. It describes Student's need to increase the length of his utterances to request help and to engage in preferred activities. Student's need to develop vocabulary, including abstract concepts such as the "wh" questions was also identified. Finally, Student's need in social communication was addressed. IEP speech and language goals were developed in the 4<sup>th</sup> grade IEP to address his vocabulary needs, specifically the "wh" concept question words and social communication to complete conversations containing a greeting, request and ending in job setting. The goals provide for a high level of support initially and gradually decreased the level of support allowed in the mastery criteria. These goal are directed to sub-domains where deficits were noted, receptive and expressive language, vocabulary and social communication. The IEP provided for 120mpw of counseling services as a related service to work on this goal, the amount of time Parents assert is needed in this area. K.L., speech pathologist, testified that she provided Student with the speech language services 1:1 and engaged in progress monitoring of his speech and language goals. These services were provided in the classroom and other settings as direct service to Student.

I find that the 4<sup>th</sup> grade speech language goal was appropriate to meet Student's needs at the time, the amount of speech language therapy services provided for in the IEP was appropriate to meet the need and Student was provided with the needed services by the District.

During Student's 2015-2016 (5<sup>th</sup> grade) school year, his IEP states that Student is able to use language within the classroom and with support. It identified the need to generalize these skills to other settings and to improve his social functioning through the use of language. The speech language goal for functional communication was designed to increase the length of Student's utterances and to engage in social exchange using language and to decrease the amount of prompts needed to support these exchanges. teach the Student to identify his feeling using a visual support during a period of dysregulation and then to engage in a coping strategy initiated by himself or an adult. The goal provided for a high level of support initially and gradually decreased the level of support allowed in the mastery criteria. The IEP provided for 120 mpw of speech and language services as a related service to work on this goal.

Parents argue that Student has deficits in all subdomains of speech and language, including receptive, expressive, pragmatic language and oral motor, feeding and articulation. K.L., Speech Pathologist, testified that the research does not support oral motor therapy for the improvement of articulation deficits. In addition, K.L. testified that Student presents with a resting open mouth posture and low muscle tone in the oral musculature. He exhibits poor lip pressure and reduced lip strength, stability and mobility. K.L. opined that articulation goals and therapy in isolation will not significantly correct his articulation errors caused by these physical conditions and therefore the focus of therapy should be on the production of understandable speech in real communication setting and increased language skills. The speech language goal works on expressive and pragmatic language and on decreasing prompts.

Parents secured a private speech language evaluation for Student in May 2016. The private clinician articulated basically the same findings as the District's evaluations. Her recommendations included 45 minutes per week of articulation, expressive and receptive language therapy and suggested 17 goals for Student to be used in therapy, including eight articulation goals, five receptive/expressive language skills and 4

pragmatic goals. These goals focus on concept and vocabulary development, social communication skills and asking questions. (PD 605-609)

I find that the 5<sup>th</sup> grade speech language goal was appropriate to meet Student's needs at the time, the amount of speech language service provided for in the IEP was appropriate to meet the need and Student was provided with the needed services by the District and is the amount the parents argued was appropriate to meet his needs.

In the January 20, 2016 IEP, District removed Physical Therapy services from Student's IEP. Student was receiving direct PT services once per week in the form of a physical therapy plan. The PT plan was developed to increase Student's strength, flexibility, and balance for greater independence in dressing activities at the parents request. (PD 208-230) Student had deficits in posture, gait, muscle tone, range of motion and muscle length as reported in the District's 2014 evaluation report. (PD 190-205) In spite of these deficits, Student was able to function and move physically independently in the school environment and access his educational program without physical assistance. Student was able to walk through the building independently. He was able to safely ascend and descend stairs using an alternating foot step pattern, but he did not always use it. Student was able to use the stairs without the use of the handrail, he frequently uses the handrail (which was safer). He was able to rise from the floor through half kneeling using his hand on his thigh for support (which is not uncommon for adult) had demonstrated the strength and ability to rise through kneeling without using his hand in the classroom when he was holding an iPad. During previous years, Student was able to use playground equipment without assistance and had adequate balance for these activities.

In January, 2015, District PT, S.J., sent an email to parents explaining her recommendation to discontinue physical therapy services for Student because there was no functional goal for student at school. Parents did not want services to be discontinued and the IEP team provided for a physical therapy plan and consultation in Student's next IEP. (SD 710-714)

In July 2015, Student's private physical therapy evaluation indicated that he had functional range of motion in his trunk and upper extremities. Student demonstrated some gait disturbance, but was noted that "he is not tripping or losing balance." Student was observed to ascend and descend stairs with a "step-to pattern" preferring to use a

handrail. Student presented with limited bilateral hamstring length and limited gastrocnemius length bilaterally which affected his ability to reach for his feet in order to perform self-care and donning/doffing of shoes and socks. It was recommended that Student participate in a stretching program to increase hamstring and ankle stretching. (PD 768-771)

District provided Student with a daily stretching plan as part of his special education program. (SD 649-651). The record in this matter supports the District's assertion that it provided Student with the services he needed to benefit from education, and that in January 2016, Student did not demonstrate a need for physical therapy services. Accordingly, I find preponderance of the evidence show that the District did not violate Student's right to a FAPE in January 2016 when it removed physical therapy services from Student's IEP.

**Issue Three:**

**Are the IEP Goals in Student's current IEP plan appropriate to meet his individual educational needs?**

Parents argue that the current IEP plan does not contain goals that are appropriate to meet his individual educational needs. They assert that Student lacks foundational knowledge in academic areas and the goals do not address these deficits. Parents assert that Student's adapted physical education needs need to be evaluated and goals should be developed based on the evaluation. Parents assert that the OT goal is a vocational transitional goal, not an OT goal and that focus should be placed on fine motor writing needs and self-care activities of daily living and sensory and regulatory needs. Parents also assert that Student's speech and language goals are not appropriate because they address the wrong vocabulary. These goals should address "wh" questions, and foundational spatial, quantitative, temporal and descriptive vocabulary. In addition, Parents assert that an Assistive Technology Assessment should have been completed to determine if Student would benefit from the use of AT for communication. Parents assert that the emotional regulation goal is inappropriate because Student lacks the foundational social-emotional skills necessary to perform the goal. Parents assert that the Student must first solidify foundational socialization skills and social communication by learning to protest appropriately, express needs and wants

appropriately, open and close circles of communication, label emotions on himself and others, and modulate his behavior. Parents again assert that the IEP goals in this area should address each social/emotional subdomain listed above. Parents reassert their argument for speech language goals in each subdomain as addressed in the section immediately preceding this section. They include in their argument here the need for an Assistive Technology Assessment. Finally, Parent assert that all academic goals are lacking because they do not address the development of foundational math skills necessary for meaningful learning in the areas of math, reading and written expression.

District argues that Parents have failed to prove that Student's IEP goals were inappropriate. They assert that the current goals are also appropriate to meet his individualized educational needs. These goals were identified based on priority and as the greatest areas of Student's needs. District does not have an obligation to provide "every special service necessary to maximize each handicapped child's potential."<sup>22</sup>

The goals contained in the April 4, 2016 IEP, including goals marked "draft" were reviewed and considered here. These goals were never agreed upon and multiple district witnesses testified that the draft goals were not discussed with the team, including the parent, at this meeting.

The APE goal provides for sit-ups, increasing in number, with hand support to increase trunk strength. The OT goal requires package assembly of 4 packages with no more than one verbal and one gestural cue per item. This goal addresses his fine motor and independent functioning needs with occupational therapy. The OT goal is designed to increase the motor planning/executive function and use of fine motor skills used by Student to complete his independent center with decreasing levels of support through prompts. The recommendations contained in the Parent's OT evaluation to improve bilateral coordination and bimanual skills are being implemented through this District goal. The reading goal entitled, "Functional Vocabulary" was developed after consideration of and in response to Dr. O.K.'s recommendations. The purpose of this goal is to increase Student's receptive and expressive vocabulary and conceptual understanding of basic signs found in the community. The emotional regulation goal continues to develop recognition of feelings, identifying vocabulary for feeling, and

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<sup>22</sup> *Board of Education v. Rowley*, 458 U.S. 176, 199 (1982).

engaging in a copying strategy while in an episode of dysregulation. The benchmarks provide for a decreasing number of prompts and cues. The math goal seeks to develop multiple math concepts (value, amount, enough, counting, comparison) using money and to develop the concept of money in exchange for work. The speech and language goal addresses social communication needs in requiring Student to complete a job using a greeting, statement, ask a question to gain information and closing with no more than one gestural prompt. Draft goals include a reading activity with visual supports requiring a response choice from a bank of three to provide details from the text, a reading comprehension goal.

As discussed above, these goals address areas of Student's need as identified by the District and also largely identified by private evaluators as well. Accordingly, I find that the preponderance of the evidence shows that the current goals developed for student are appropriate to meet his need for special education and related services.

**Issue One, iii:**

Does Student require educational placement in a therapeutic day school setting to meet his individualized educational needs?

Parents assert that Student needs are such that he requires placement in a therapeutic day school setting to meet his individualized needs. They argue that Student has not made meaningful progress and that to do so he needs intensive instruction, using multiple modalities and methodologies, delivered on a frequent and consistent basis delivered to him 1:1. Parents rely on the recommendations of Dr. O.K.. On April 13, 2016, Dr. O.K. provided letter which contained recommendations for a change of placement from CMS to a therapeutic day school for Student. Dr. O.K. states that several factors must be considered in determining Student's educational placement.

First, Student requires a placement that provides autism specific supports, including intensive intervention techniques/programs such as ABA, TEACH and PECS to properly address Student's needs to make meaningful gains in his developmental process. No evidence was presented by the Parents that the staff at CCDS use ABA, or TEACH as recommended by Dr. O.K. District provided evidence that its GIP teachers at the elementary and middle school level have been trained in those specific methodologies and implement them in the GIP program.

Next, Dr. O.K. states that Student needs a nurturing, structured, and sensory supportive environment. The District program at CMS is described as an environment that is similar to the GIP program at WES. The GIP provides a small class size with a multi-disciplinary team approach. Students are provided a combination of 1:1 and small group instruction and are included in general education classes and during lunch and special activities. In addition, the GIP at CMS has a strong community experience component. In contrast, the CCDS operates on a 30 minute block time for service and instruction. Students are provided direct 1:1 instruction and services, limiting opportunities for social interaction and communication with peers. The provision of services in a pullout model does not provide students with a meaningful context for the application and generalization of the skills they are learning. Dr. O.K. states in his report, “[i]mportantly, an equal emphasis should be placed on more natural, or incidental, teaching throughout the day. This will reinforce naturally occurring behaviors as well as promote generalization of skills learned in more structured contexts. District’s placement at CMS in the GIP can provide Students with these opportunities.

Finally, Dr. O.K. says Student needs access to assistive technology to enhance his communication and academic skills. K.L. testified that she did not recommend an Assistive Technology Assessment for Student because he was a verbal language communicator. K.L. indicated in her testimony that Student is interested in electronic technology and engages with his iPad and the Promethean Board regularly in school. She was concerned that use of an electronic type communication device would discourage Student from using the verbal language skills that he has. K.L. pointed out that the visuals that Student uses are a low tech form of assistive technology and that he does very well with them. In addition, Parent’s private speech evaluation did not contain a recommendation for an AT assessment.

The K.L., M.S. and M.D. each testified that they reviewed Dr. O.K.’s report carefully and considered the recommendations he made for Student. They met together and reviewed recommendations and the proposed IEP for Student and compared the documents. K.L., M.S. and M.D. each felt that the GIP program was currently implementing the majority of the recommendations given by Dr. O.K. and that the GIP program at CMS does too.

Parent offered the testimony of D.S., teaching assistant for the District who is also employed by Parents as a private caregiver for Student, concerning the GIP program at CMS. D. S. testimony concerning the CMS GIP program and her opinion of the appropriateness of this program for Student. D. S. testimony concerning GIP at CMS conflicted with the testimony of M.D., K.L. and K.E. concerning the GIP at CMS. D. S.'s experience at CMS is limited to the period of 6-8 weeks. She lacks the educational background and work experience to provide a meaningful evaluation of the GIP at CMS based on her limited experience in the program. For these reason, D. S.'s testimony concerning the components of the GIP program at CMS is not credible.

The District is required by IDEA and its regulations to provide an appropriate education, not the best possible education or the placement the placement the parents prefer.<sup>23</sup>

District has provided evidence that the IEP goals are appropriate to address Student's needs. District has provided evidence that they are able to fully implement provide the services contained in the IEP. District has provided evidence that the CMS placement provides many and varied opportunities for inclusion in the general education program and access to general education peers, and the components of the least restrictive environment requirement. The preponderance of the evidence in this matter indicates that Student is receiving an appropriate education under the IEP offered by the District and that he is not in need of a therapeutic day school placement.

**Issue Four:**

**During Student's 2014-2015, 4<sup>th</sup> Grade School Year and/or 2015-2016, 5<sup>th</sup> Grade School Year, did District's instructional model foster prompt dependence limiting Student's independent functioning in the school setting, resulting in a denial of FAPE to Student?**

Parents contend that the District's instructional model fostered prompt dependence which limited Student's independent functioning in the school setting.

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<sup>23</sup> *Heather S. V State of Wis.*, 25 F.3d 1045, 1057 (7<sup>th</sup> Cir. 1997) (citing *Board of Educ. of Community Consol. Sch. Distr. 21 v Illinois State Bd. of Educ.*, 935 F.2d 712, 715 (7<sup>th</sup> Cir.) and *Lachman v Illinois State Bd. of Educ.*, 852 F.2d 290, 297(7<sup>th</sup> Cir. 1998)).

Parents argue that the District was inappropriate in its provision of verbal cues, gestural prompts, visual supports, answer choices, cloze statements, verbal modeling, adult modeling, sentence starters, language scripts, physical prompts, etc. to Student. Parents assert that the District failed to design Student's instructional program and IEPs to include a systematic, leveled prompt hierarchy. Parent's point to District staff's representations that they provide Student with "whatever supports he needs to function at school" as an admission to the allegation that they created prompt dependence.

The Parents failed to provide testimony or documentary evidence in support of their claim that the District's instructional model used in the GIP fostered prompt dependence. Parent's assertion is largely based on the one hour classroom observation of K.P. Dr. O.K.'s report contains a summary report of the classroom observation completed for his evaluation. Missing from this summary are references to the overuse or misuse of prompts or prompt dependency. In fact, the observer commented that Student displayed good engagement and that he highly benefitted from the use of accommodations including the break down tasks, written list steps, decreased verbal directions and the use of visuals. (PD 451) Review of the IEPs in this matter shows the District staff seeks to decrease prompts, cues and gestures and increase the frequency and accuracy of Student responses when developing IEP goals. The videos provided demonstrations of how instruction occurs and clearly demonstrate appropriate cuing gesturing and prompting of Student to maintain his engagement and increase his time on task. District provides Student with constant adult supervision during the school day, but this supervision is for safety and assistance if needed and does not equate to fostering prompt dependence. The preponderance of the evidence in this matter does not support the Parents' claim that the District has fostered prompt dependence.

The District has a burden of production under Illinois Law. The preponderance of the evidence shows that the District has at all relevant times identified the special education needs of Student through its evaluations, assessments, progress monitoring and reports of current levels of performance. The preponderance of the evidence show that the District has made available to Student the special education and related services that are appropriate and adequate to meet Student's needs. The IEP has not been implemented because Student has not attended school since the opening of the 2016-2017 school year

and prior to the close of the 2015-2016 school year stay put was in place and the District was operating with the 2015- 2016 IEP as required. I find the preponderance of the evidence shows that the District has provided and proposes to provide to Student a FAPE in the least restrictive environment.

**ORDER**

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

The District does not need to take any further action as Parents have not sustained their burden of proof in this case.

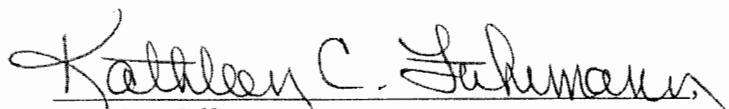
**NOTICE OF RIGHT TO REQUEST CLARIFICATION**

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 must specify the portions of the decision for which clarification is sought. A copy of the request must 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.

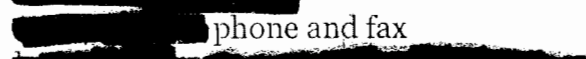

**NOTICE OF RIGHT TO APPEAL**

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: October 17, 2016

  
Hearing Officer



 phone and fax  


APPENDIX A

[REDACTED], Student v. [REDACTED] School District [REDACTED]  
Case No: 2016-0425

Student	[REDACTED]
CCDS, Attending School	[REDACTED] Day School
Father, Petitioner Mother, Petitioner	[REDACTED], father and [REDACTED] mother
District	[REDACTED] School District [REDACTED]
Attorney R.	[REDACTED], Parent's Attorney
Attorney W.	[REDACTED], District's Attorney
Attorney K.	[REDACTED], District's Attorney
Dr. J. M.	[REDACTED], District [REDACTED] Executive Director of Student Services
K. L.	[REDACTED], District's Speech and Language Pathologist
M. D.	[REDACTED], District's Occupational Therapist
N. E.	[REDACTED], K-__ Special Education Teacher
M.S.	[REDACTED], 4th-5 <sup>th</sup> grade Special Education Teacher
K.B.	[REDACTED], Private Educational Consultant
K.P.	[REDACTED], Private Behavior Analyst
Dr. O. K.	[REDACTED], private clinical psychologist
J. B.	[REDACTED], Private Sp./Lang. Pathologist
E. K.	[REDACTED], Private Occupational Therapist
D.F.S.	[REDACTED], District Teaching Assistant, private paraprofessional service provider for Student
S. J.	[REDACTED], Northern Suburban Special Education (NSSD) physical therapist
Dr. C. R.	[REDACTED], District's Physical Therapist

C. M.	[REDACTED] NSSED Occupational Therapist Coordinator
E.B.	[REDACTED] Wilmot Elementary School Principal
L. G.	[REDACTED], Former District School Psychologist
J. M.	[REDACTED], District 5 <sup>th</sup> Grade General Education Teacher
K. T.	[REDACTED] District Adaptive Physical Education Teacher
K. E.	[REDACTED], District 6 <sup>th</sup> Grade General Education Teacher
WES	[REDACTED] Elementary School
CMS	[REDACTED] Middle School
GIP	Guided Instruction Program
[REDACTED]	[REDACTED]
ELS	Educational Life Skills

CERTIFICATE OF SERVICE VIA CERTIFIED MAIL

I, the undersigned Kathleen C. Fuhrmann, certify that on October 17, 2016, a copy of FINAL DETERMINATION AND ORDER was served upon the following persons via certified US Mail delivery by depositing the same in the United States Mail, in an envelope securely sealed, postage prepaid, return receipt requested and legibly addressed to the addresses set forth below:

[REDACTED]

[REDACTED]

[REDACTED] Executive Director of Student Services  
[REDACTED]

[REDACTED]

Andrew Eulass  
Due Process Coordinator  
Illinois State Board of Education  
Division of Special Education Services  
100 N. 1<sup>st</sup> Street  
Springfield, IL 62777

Dated: October 17, 2016

Signed: *Kathleen C. Fuhrmann*

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

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STUDENT,

Student,

Case No: 2016-0425

v.

Kathleen C. Fuhrmann, Impartial Hearing

Officer

 SD 

School District.

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CERTIFICATE OF SERVICE VIA EMAIL

I, the undersigned Kathleen C. Fuhrmann, certify that on October 17, 2016, a copy of FINAL DETERMINATION AND ORDER was served upon the following persons via email transmission by attached said document(s) in pdf format to the email addresses set forth below:





Dated: October 17, 2016

Signed: 