

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

---

■.■■■ a minor, by and through  
his Parent(s),

Petitioners,

- against -

Case No. 2016-0241

Chicago Public Schools #299

Jennifer A. Leisner  
Impartial Due Process Hearing Officer

Respondent.

---

**FINAL DETERMINATION AND ORDER**

**Jurisdiction**

This proceeding was invoked in accordance with the *Individuals with Disabilities Education Act* (“IDEA”), as amended in 2004, codified in 20 U.S.C. §§1400, *et seq.*, the *Illinois School Code* (“School Code”) 105 ILCS 5/14-8.02a and their respective implementing regulations: 34 C.F.R. §§ 300.01 *et seq.*, and 23 Ill. Admin. Code §§226.600, *et seq.*

**Brief Procedural Background**

Petitioners are the Parent of ■■■ (“Student”), an 8<sup>th</sup> grade student residing within the boundaries of the Chicago Public Schools #299 (“School District”) and currently attending ■■■■■■■■■■ pursuant to a unilateral placement by the Parent. On January 23, 2017, the Parents submitted a written request for an IEE, gave 10-day unilateral placement notification, requested Student records, and filed a DPCN (“DPCN”). On January 27, 2017 the School District filed a counter-due process

complaint notice (“counter-DPCN”) against the Parent to defend its evaluations. On January 28 the Parents filed response to the School District’s counter-DPCN. The School District filed a response to the Parent’s DPCN on February 2, 2017. An Order of Consolidation was entered on January 28, 2017. On March 30, 2017 the Parent filed an Amended DPCN. The School District responded the Amended DPCN on April 9, 2017. On April 21, 2017 the Parent informed the School District that it was acting on the January 23, 2017 unilateral notice and that the Student would begin classes at [REDACTED] on April 24, 2017. On May 11, 2017 the parties, through counsel, submitted their Prehearing Conference Disclosure Statements pursuant to an Amended Notice of Prehearing Conference dated May 1, 2017.<sup>1</sup> On May 12, 2017 the parties conducted Part I of the Prehearing Conference and set hearing dates requiring an extension of the 45-day deadline. The second part of the Prehearing Conference was moved to July 12, 2017.<sup>2</sup> The Hearing took place on September 5-7, 11-13, October 5, and November 3, 2017.

### Issues

The issues being presented for determination are as follows:

- A. *Whether the evaluations of the Student conducted by the School District on March 13, 2015 were appropriate; and whether from January 23, 2015 through the present (“Statutory Period”) the School District appropriately evaluated the Student (and/or re-evaluated the Student) in all suspected areas of disability?*

---

<sup>1</sup> The date for the Prehearing Conference and hearing were properly extended at the request of the parties to allow them to participate in State-sponsored mediation as well as to engage in settlement discussions, and to allow the Student’s private evaluations to be completed.

<sup>2</sup> At the May 12, 2017 PHC Part I, the verbal request to continue the 45-day deadline was granted by the Hearing Officer verbally. Through a clerical error, the parties failed to memorialize their request for a continuance until the date of the second PHC (July 12, 2017) at which time a written Order was immediately entered by the IHO. This Hearing Officer finds that this clerical mistake did not prejudice the parties; and the record has been subsequently corrected.

1. The School District submits that for the period of time set forth above it appropriately evaluated the Student in all areas of suspected disability.
2. The Parent submits that for the time period set forth above, the evaluations conducted by the School District were inappropriate and untimely, did not address new information regarding the Student's functioning and continued lack of progress. The Parents submit that the Student was denied FAPE as a result, and that the School District was obligated to provide an IEE to the Student as a result.
3. **Relief.** The School District seeks a ruling in its favor; and asks the IHO to find that an IEE is not warranted. The Parent seeks a ruling that the evaluations conducted by the School District are in appropriate and that the Hearing Officer order the School District to re-evaluate the Student at public expense, and/or to reimburse the Parents for third party evaluations.

*B. Whether for the period of time from January 23, 2015 to the Present ("Statutory Period"), the School District created and implemented appropriate IEPs for the Student to address his documented academic and social-emotional/behavioral needs, as well as to develop an appropriate transition plan?*

1. The Parent submits that for the Statutory Period the School District neither created nor implemented IEPs that appropriately addressed the Student's documented academic, social-emotional/behavior needs, nor to develop an appropriate transition plan.
2. The School District submits that for the Statutory Period the School District both created and implemented IEPs that appropriately addressed the Student's documented academic and social-emotional/behavioral needs; and, created an appropriate transition plan for the Student.
3. **Relief.** The Parent requests that the Hearing Officer make a finding in its favor and order the School District to revise the Student's IEP to appropriately address his academic, social-emotional/behavioral needs as well as to develop an appropriate transition program. The Parent also seeks an award of compensatory damages in the form of individualized tutoring (to address the Student's academic needs) and individualized counseling to address his social-emotional/behavioral needs.

The School District also requests that the Hearing Officer make a finding in its favor and reject all of the Parent's claim for relief.

C. *Whether, the School District appropriately created and/or implemented the Student's IEPs dated March 13, 2015 and March 23, 2016 respectively (in all areas); and, whether these IEPs were based upon appropriate evaluation data? Whether, for the Statutory Period the Student's IEPs contained an appropriate placement for the Student; and whether these IEPs were appropriately implanted regarding related services?*

1. The Parent submits that the March 13, 2015 and the March 23, 2016 IEPs were built upon inappropriate evaluation data, and thus were substantively inappropriate in all required areas. The Parent submits that these IEPs were not appropriately updated and revised, that the Student's placement was inappropriate and that related services were not appropriately implemented. The Parent further submits that the Student was denied FAPE as a result.
2. The School District submits that the aforementioned IEPs are appropriate in all required areas; and, in the alternative, that the School District has adopted the Parent's unilateral placement at [REDACTED] (and that issue/relief is no longer at issue in the hearing).
3. **Relief.** The Parents seeks a ruling in her favor; and also asks that the IHO find that the Student's placement at [REDACTED] is appropriate and order the School District to continue to pay tuition and transportation costs for the 2017-2018 School Year, inclusive of Extended School Year. The Parents also ask the IHO to order an eligibility/IEP meeting to be convened at [REDACTED] (including funding the participation of third-party experts to attend the IEP meeting); and, further order the School District to develop and IEP consistent with the evaluation reports of the third-party evaluators ~ especially in the following areas: Wilson reading program; social work (60 mpw); speech/language direct services (90 mpw); CAP direct services (30 mpw); OT direct services (60 mpw) and individual and group therapy (60 mpw); and assisted technology (with staff/parent/student training); ESY for six weeks during the

summer of 2018; transportation; an updated transition plan; and updated FBA and BIP.

The School District seeks a ruling in its favor; and, further requests that the IHO deny the Parent's requested relief.

D. *During the Statutory Period, did the School District comply with the procedural requirements of the IDEA, specifically by appropriately and accurately informing the Parent of the Student's progress? If so, did the failure of the School District to follow the procedural requirements of the IDEA as set forth above either (a) deny the Student a free appropriate public education (FAPE), (b) significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or, (c) deny the Student an educational benefit? Specifically, did the School District:*

- *Provide the Parent with legible and complete copies of Student records pursuant to the IDEA and the IHO's previous Order on the issue?*
- *Appropriately schedule and revise IEPs as it received third-party evaluation reports?*
- *Appropriately provide the Parent with Student information required under the IDEA in a manner that allowed the Parent to be able to meaningfully participate in educational planning for the Student?*

1. The Parent submits that during the Statutory Period the School District failed to provide the Parent with the Student's school record in violation of the IDEA; failed to appropriately schedule and revise IEPs when the School District received third-party evaluation reports; and, failed to provide the Parent with required educational information in a manner that prevented the Parent from meaningfully participating in the educational planning process. The Parent submits that these procedural violations denied the Student a FAPE, significantly impeded the Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student; or otherwise deprived the Student of an educational benefit.

2. The School District submits that for the Statutory Period it appropriately provided the Student's school records to the Parent; that it appropriately scheduled/ convened IEPs when it received third-party evaluation reports; and, that it shared pertinent Student information in a manner that allowed the Parent to meaningfully participate in the educational planning of the Student. The School District also submits that if the IHO finds it violated the IDEA, the alleged violations did not deprive the Student of a FAPE; did not significantly impede the Parent's opportunity to participate in the decision-making process for the provision of FAPE to the Student; or otherwise deprive the Student of an educational benefit.

**Relief.** The Parent seeks an award of compensatory damages in the form of:

- Compensatory services as recommended by the third-party evaluators;
- 1:1 tutoring services beyond the school day by a certified special education teacher for 60 minute sessions twice a week for the period the Student was denied FAPE;
- 1:1 speech/language services by a certified speech language pathologist beyond the school day for 60 mpw for the period the Student was denied FAPE;
- 1:1 OT services by a certified occupational therapist beyond the school day for the period the Student was denied FAPE;
- Integrated assistive technology to allow the Student to benefit from the aforementioned compensatory education;
- FastForward for 50 hours (scheduled one hour weekly with FastForward personnel);
- Transportation costs to and from the aforementioned interventions;

- Additional assistive technology to assist the Student at home, in addition to a home computer and iPad.

The School District seeks a ruling in its favor and for the IHO to deny the Parent's requested relief.

### **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:

The Student was adopted by the Parents from [REDACTED] when he was approximately 6 years old. (School District ## 4, 5, 11, 13, 14, 21, 22, 24, 31, 34; Parent's ## 7 15, 21, 22, 24, 25, 26, 27, 29, 32, 38, 44, 49, 50, 55, 58, 67, 69, 77, 82, 83, 84 and 87, Mother's Testimony)<sup>3</sup> His prenatal, birth and childhood developmental information are largely unknown, [REDACTED]

[REDACTED]. (Id.) The Student has shown consistent academic, language, social and behavioral deficits since his arrival in the United States. (Id.) Since his arrival in the United States, the Student has had many different diagnosis, and has qualified for special education and related services under several different eligibility diagnosis. (Id.). At present, the Student has been diagnosed with the following:

[REDACTED]

[REDACTED]

---

<sup>3</sup> The Exhibits at hearing will be designated as either "Parent # \_\_\_" or "School District # \_\_\_." Appendix A is attached to the end of this opinion giving the full name of all witnesses, for the purposes of creating an accurate record. In this Final Determination and Order, witness will be referred to either by their initials.

<sup>4</sup> The most recent diagnosis of [REDACTED] for the Student was by [REDACTED] in 2017. (Parent's # 83). However, this diagnosis has been part of the constellation of disability diagnosis for the Student at the School District as early as 2015 (see, e.g., School District #5).

[REDACTED]

[REDACTED]

During the Statutory Period, the Student's IEPs have consistently set forth that the Student's disabilities have adversely impacted his ability to access his education. For example, despite having average intelligence, the Student has extremely low math calculation skills, applied math skills (including math fluency), reading skills (in reading comprehension, oral reading, fluency, and written expression), poor written expression skills, and very low expressive and receptive language skills. (Parent's ## 15, 21, 22, 24, 25, 67; School District ##3, 4, 5, 13, 14). The Student's IEP Team has also consistently noted that the Student exhibited behaviors are interfering with his ability to learn: [REDACTED]

[REDACTED] (Id.) For the entirety of the Statutory Period he has been eligible to receive special education and related services under the eligibility designations of Specific Learning Disability (for reading, written expression and math), Other Health Impairment (for his ADHD) and Speech/Language Impairment. (School District ## 5, 13, and 14).

The Student attended [REDACTED] (a public school within the School District) from late 2014 until the spring of 2017, at which time he began attending [REDACTED]

---

<sup>5</sup> As will be discussed more thoroughly below, the Student has been extensively evaluated by both School District and private evaluators. While many areas of deficit (e.g., expressive/receptive language disorder and learning disabilities) have been identified by these evaluators, other diagnosis (e.g., autism, CAPD) have been less consistent. The lack of birth, infant and early childhood information, as well as the Student's late acquisition of English as his primary language, has complicated the continuity of diagnosis for the Student. School District ## 4, 5, 11, 13, 14, 21, 22, 24, 31, 34; Parent's ## 7 15, 21, 22, 24, 25, 26, 27, 29, 32, 38, 44, 49, 50, 55, 58, 67, 69, 77, 82, 83, 84 and 87.

██████████ after his Parents unilaterally enrolled him there<sup>6</sup>. (Mother's Testimony, ██████████, Testimony. School District ##3, 27 Parents #67).<sup>7</sup> The Parents provided the School District written notice of their intent to unilaterally enroll the Student at ██████████ ██████████ on January 23, 2017; and acted on that notice by enrolling the Student at ██████████ ██████████ on April 24, 2017. (Parent's #64). The School District did not challenge that ██████████ is an appropriate placement for the Student, and supports his attendance there. (██████████ Testimony)<sup>8</sup>

## 1. Student Evaluations.

### A. School District Evaluations.

---

<sup>6</sup>Throughout the hearing the School District through counsel and through ██████████'s testimony has maintained that it supports his attendance at ██████████ and will fund it. (S.D. #27, ██████████. Testimony). However, the Parent has submitted that despite these informal assurances there is no IEP officially placing the Student at ██████████ ██████████ nor has the School District reimbursed the Parents for their out of pocket expenses to place the Student at ██████████ ██████████ (See, e.g., P#67. Mother's Testimony). The Parent presented several ██████████ witnesses (██████████, ██████████, ██████████, and ██████████) who testified about the Student's experiences at the school. All of them testified that the Student is making progress at ██████████ Academy. These witnesses laid the foundation for a draft IEP dated August 23, 2017 to support the Student at ██████████ (Parent's #67) There has yet to be an IEP to consider this draft IEP. (Mother's Testimony). A review of this IEP shows that it provides for a multisensory reading and math program, that it contains modifications and supports that are set out in ██████████'s, ██████████'s, ██████████'s, ██████████'s, ██████████'s and ██████████'s evaluation reports. (Id) It contains goals in the areas of reading, writing, English, math, Independent Functioning, Sensory, speech/language, social work, and transition. (Id) The Student would receive 60 mpw of social work services, 60 mpw of OT, and 90 mpw of Speech Therapy all outside of the classroom setting. (Id) The IEP contains a draft FBA and draft BIP. Its transition plan and ESY sections are not completed. (Id)

<sup>7</sup> The School District provided evidence that the Student transferred to the School District after first attending school in ██████████ ██████████, where his deficits were not as thoroughly addressed. (S.D. ## 1, 2. ██████████ Testimony). The Hearing Officer notes that the School District did create its own IEP for the Student within weeks of his transfer from ██████████. (School District #3).

<sup>8</sup> All of the Parent's evaluators are in agreement that the Student needs instruction in a self-contained setting, in an environment where he can receive a multi-sensory academic program, and related services in speech/therapy, social work and occupational therapy. They all agree that the Student requires AT to access his curriculum. (Parent's ##55, 69, 77, 82-84, ██████████ Testimony, ██████████ Testimony, ██████████ Testimony, ██████████ Testimony, ██████████ Testimony and ██████████ Testimony.) All are familiar with ██████████ and all support his continued placement there. (Id).

For purposes of this ruling, the relevant time period is from January 23, 2015 to the present (“Statutory Period”). On March 13, 2105, while the Student was in sixth grade, the Student’s IEP Team met to consider the following evaluations, completed by the School District (School District #4, 21, 22, 24, and 31. Parent #21<sup>9</sup>):

1. *Health.* The school nurse (who did not testify at hearing), noted that the Student has a diagnosis of ██████ for which he was medicated; but no other major chronic health issue. The School Nurse also indicates that the Student has “no behavioral or social problems”.
2. *Psychological Evaluation.* (School District #22) The School District’s psychologist<sup>10</sup>, ██████, evaluated the Student on February 5, 2015. She reviewed the Student’s Fountas and Pinelle (FP Reading Program) progress monitoring information, noting that the Student was at level N (which she described as 3<sup>rd</sup> grade), with multiple errors and anxiety about reading. (Id) She administered only five (5) subtests of the Weschler Individual Achievement Test, 3<sup>rd</sup> edition (WIAT-III) (reading comprehension, math problem solving, word reading, pseudoword decoding, numerical operations), and calculated a composite score of basic reading and mathematics that placed the Student in the extremely low range of functioning (Basic Reading = 5<sup>th</sup>%ile, Mathematics = 2<sup>nd</sup>%ile). ██████ could not score the writing portion

---

<sup>9</sup> Both parties each entered the many of the same IEPs into evidence at hearing, which results in duplicated exhibits. There were no arguments or evidence that these duplicate copies were distinguishable from each other. Therefore, the Hearing Officer may choose to cite only to one exhibit number for brevity.

<sup>10</sup> All of the School District’s evaluators testified that they have the necessary education, experience and certification in their fields. (█████, ██████, ██████, ██████.) The Parents did not challenge the underlying credentials of the School District evaluators, and the Hearing Officer finds that they had the necessary knowledge and expertise in each of their fields to be able to be knowledgeable about various evaluation instruments and to determine which evaluation instruments were relevant for the Student.

of the assessment as the Student was unable to even produce one sentence for her. (Id). ██████ did not make a recommendation for any specific reading, writing or math remediation or methodology. She noted the Student's history of adoption and late English acquisition, stating that he had ELL services for several years prior to attending the School District. She noted that prior documentation of the Test of Nonverbal Intelligence (TONI-3) concluded that the Student was of normal intelligence. (School District #22)

█████ administered the following assessments as part of her evaluation: Behavioral Assessment System for Children-Second Edition (BASC-II); Behavior Rating Inventory of Executive Functioning (BRIEF); Childhood Autism Rating Scale, Second Edition-High Functioning Version (CARS2-HF); Childhood Autism Rating Scale, Second Edition-High Functioning Version-Questionnaire for Parents (CARS2-QPC); Gilliam Autism Rating Scale, Third Edition (GARS-3); Reynolds Intellectual Assessment Scales, Third Edition (RIAS-3), selected subtests; Universal Test of Nonverbal Intelligence; Weschler Intelligence Scale for Children – Fourth Edition (WISC-IV); Vineland Adaptive Behavior Rating Scale, 2<sup>nd</sup> Edition (for Parents and teachers) (VABS-II); and the Behavior Observation of Students in Schools (BOSS, for her classroom observation). (Id). Although there was some subtest scatter on the WISC, the Student's overall cognitive ability was found to be in the extremely low range, due largely to extremely low scores in verbal comprehension, comprehension, word knowledge, working memory, and short term auditory memory/sequencing/mental manipulation. (Id) ██████ did not consider the Student to be cognitively impaired. (Id)

The GARS and CARS given to the Student's Parents and teachers indicate that he met the criteria for mild to moderate [REDACTED].<sup>11</sup> His [REDACTED] diagnosis was confirmed with the Student demonstrating marked inattentiveness and distractibility. His adaptive skills were determined to be low, and the Student was reported to demonstrate [REDACTED] in the school setting, and [REDACTED] [REDACTED] (Id).<sup>12</sup>

3. *Social Work* (School District #21). [REDACTED] administered a Social History for the Student. She made a review of his records, interviewed the Student, his Parents and teachers but does not report that she made a classroom observation. (Id. [REDACTED] Testimony)<sup>13</sup> She did not conduct any assessment of the Student as [REDACTED] would be giving the assessments that were relevant to the Student's social/emotional functioning. ([REDACTED] Testimony) In her social history, she notes that the Student "often appears to not hear what is being

---

<sup>11</sup> Despite the results of the GARS and the CARS, [REDACTED] did not recommend that the Student be eligible for special education under the eligibility designation of autism due to his history in [REDACTED] ([REDACTED] S Testimony) [REDACTED] did not recommend any further evaluations to rule autism in or out as an eligibility category (Id.), despite the fact that there is an evaluation, the Autism Diagnostic Observation Schedule (ADOS), that could have been given, and is considered the "Gold Standard" of autism assessments. ([REDACTED] Testimony)

<sup>12</sup> [REDACTED] reviewed [REDACTED]'s protocols and made the following observations: (1) there were several scoring errors on the VABS-II; (2) [REDACTED] should have not have administered the motor skills domain (and subdomains) for the VABS-II as it does not have normative data for ages 7 – 49; (3) [REDACTED] incorrectly awarded the Student a point for an "don't know" response, which changes the Standard Score for the Verbal Comprehension Subtest; (4) the raw score on the Social Communication subscale for the GARS-3 is miscalculated; and, (5), there are scoring inconsistencies for the CARS-2. ([REDACTED] Testimony, Parent's #83). [REDACTED] also expressed concern that [REDACTED] should have given a more basic writing assessment once she learned that she could not give the Student the Essay Composition subtest of the WIAT-III, that no one assessed the Student's phonological skills, that an assessment for CAPD was not given by the School District, that an eligibility designation of autism was not identified; that a functional behavior assessment was not completed, that an AT evaluation was not completed. (Id).

<sup>13</sup> [REDACTED] testified that she made a classroom observation sometime in February. However, she could not account for why she did not state that in her report. ([REDACTED] Testimony). She did do a classroom observation in 2017 when she accompanied the Parent's private Speech/Language evaluator on her observation of the Student. ([REDACTED] Testimony, [REDACTED] Testimony, Parent #48).

said and may be ignoring, pretending not to hear, or is distracted. He is easily distracted and loses focus. If there is a lot of noise he becomes distracted. He often becomes angry when he is called on his behaviors and held accountable to do his work.” (School District #21). She recommends 1:1 adult support for his “defiant” behaviors. (Id) Despite these indicators that the Student’s behavior is interfering with his education, neither [REDACTED] nor any other IEP Team member recommended a Functional Behavior Assessment (FBA). (Id)

4. *Speech Therapy*. (Parent’s #87) [REDACTED], the School District Social Worker, in addition to a record review and classroom observation, administered an Oral Motor Assessment, a Voice Assessment, the Goldman Fristoe Test of Articulation (GFTA), the Peabody Picture Vocabulary Test (PPVT-III), the Comprehensive Assessment of Spoken Language (CASL), and an informal assessment of fluency. The Student’s oral motor skills were age-appropriate. In all other areas evaluated by [REDACTED], the Student measured well behind is same-aged peers. (Id) His voice has a flat affect, his speech is sometimes unintelligible, he cannot speak more than two sentences at a time (thus thwarting the examiner’s ability to assess his conversational skills), his subtest scores on the CASL were 3 standard deviations below the mean, he has difficulty following verbal instructions and his fluency is impaired. (Id) [REDACTED] concluded that he has a significant communication impairment that adversely affects his educational performance in reading, language arts, and social

interactions with adults and peers, and recommended that he receive Speech Therapy. (Id., ██████ Testimony)<sup>14</sup>

5. *Occupational Therapy.* (School District #11) ██████, the School District Occupational Therapist (OT) evaluated the Student. In addition to a record review, Student and Teacher interviews and a classroom observation, ██████ administered the Visual Motor Integration standardized assessment (subtest) (VMI), the Visual Perception Subtest, and the Motor Coordination subtests<sup>15</sup>. The Student's special education teacher completed the Sensory Profile School Companion. (Id) ██████ notes that the Student is inefficient at most classroom tasks (although he has an area of relative strength with computer), has difficulty starting and completing tasks independently. (Id) His Beery VMI scores were in the Low to Below Average range. ██████ recommended that the Student receive occupational therapy as a related service. (School District #11, ██████ Testimony).

---

<sup>14</sup> ██████ did make an assistive technology referral for the Student in 2015, although the Student did not receive one. (█████ Testimony, Parent #18). Initially, the referral was made to address the Student's articulation issues; and, once his articulation improved the School District did not follow up on the AT evaluation. (█████ Testimony, Mother's Testimony) Yet the referral indicated that AT would benefit the Student for more than his articulation issues. (Parent #18) ██████ did note in this referral that the Student has difficulty verbally responding to questions, conversations and asking for help; that he cannot understand questions that are being asked of him; and that he needs redirection. (█████ Testimony, P #87) Nevertheless ██████ did not recommend that the Student be evaluated for CAPD, despite these common indicators. (█████ Testimony). Also, the Parent's private evaluator, ██████ noted that there were several scoring errors after reviewing ██████'s protocols: most notably that there was no basal score on the CASL, and that was not noted in the report, thus invalidating the standard score. (Parent's #88, ██████ Testimony)

<sup>15</sup> ██████, the Parent's private evaluators testified that in her expert opinion ██████ should have given additional subparts of the VMI. (█████ Testimony). She felt that ██████ did not get enough specific information on the Student to better address his needs, given the Student's complex history and presentation. (Id). However, she did testify that ██████'s choice not to give all of the subtests of the Beery VMI did not invalidate the test results. (Id). She also took issue with the Sensory Profile administered by the School District's OT as it did not produce quadrant scores. (Id). ██████ also criticized ██████ for failing to perform a task analysis, and not resolving inconsistencies in the scoring by doing an assessment of the Student's bilateral skills. (Id).

## ***B. Independent Evaluations.***

The results of the private evaluations<sup>16</sup> are summarized as follows:

- a. *Reading Evaluation.* ██████ administered several reading assessments to the Student January 2017. She observed the Student at ██████ School on March 2, 2017, and conducted a telephone interview of ██████, the Student's teacher at ██████ (Parent #84, ██████ Testimony). ██████ administered the Wilson Assessment of Decoding and Encoding and the Jerry L. Johns Basic Reading Inventory (Id).<sup>17</sup> The Student's test scores on the WADE and Reading Inventory give him an extremely low score, and unable to read with fluency and comprehension at more than a Grade Two level. ██████ recommends that the Student take part not in his current FP reading program, but in a multisensory reading program such as Wilson. (Id) She also recommends that the Student be given compensatory education in the following amounts: two (2) years of intensive Wilson remediation (i.e., and additional 120 minutes per week (mpw) of Wilson instruction in addition to receiving Wilson as part of his school day, to be delivered in a small group setting and during the summer). She also recommends assistive technology, such as FastForWord into the Student's

---

<sup>16</sup> All of the Parent's evaluators testified that they have the necessary education, experience and certification in their fields, and they were certified as experts at hearing (█████, ██████, ██████, ██████, and ██████.) The School District did not challenge the underlying credentials of the Parent's private evaluators, and the Hearing Officer finds that they had the necessary knowledge and expertise in each of their fields to be able to determine which evaluation instruments were relevant for the Student.

<sup>17</sup> ██████ Testified that she used to be employed by the School District as a reading specialist and that the WADE is routinely used at the School District. (█████ Testimony). She submitted an invoice for \$1087.50 which was paid by the Parents.

school day, as well as one hour per week of compensatory FastForWord tutoring outside of the school day. (Id)

- b. *Central Auditory Processing Evaluation*<sup>18</sup>. [REDACTED], a board certified audiologist, evaluated the Student in February 2017. ([REDACTED] Testimony, Parent #55) She administered standard puretone and speech audiometry tests, as well as tests designed to overwork the auditory system to assist integrity. (Id) She determined that the Student had adequate peripheral hearing sensitivity and middle function for each ear. However she also found that he had difficulty on degraded speech tasks taxing auditory discrimination and closure and that he also had difficulty on dichotic listening tests taxing binaural integration and separation. (Id) Finally she found that the Student has an age-appropriate ability to provide a verbal label to tonal patterns. (Id) She diagnosed the Student with CAPD, and made multiple recommendations for school interventions, as well as proposing specific IEP goals for the Student<sup>19</sup>. She made specific lip-reading recommendations for the Student (Parent #56).<sup>20</sup> [REDACTED] described CAPD as affecting language development including acquisition of age appropriate vocabulary, grammar, or semantics. (Student's #55, [REDACTED])

---

<sup>18</sup> [REDACTED], the School District's audiologist, did a review of [REDACTED]'s report. Parent's #29. [REDACTED] did not disagree with [REDACTED]'s findings ([REDACTED] Testimony).

<sup>19</sup> [REDACTED]'s recommendations for school-based interventions include (but are not limited to): rephrasing, using clear, concise and simple language, limiting use of ambiguous messages, teaching a student to visualize and verbalize to increase receptive and expressive language skills, use of AT, CAP remediation, use of a multisensory reading program (such as Wilson or Orton Gillingham) and a multisensory math program, and waiving a foreign language requirement. (Id.)

<sup>20</sup> [REDACTED] submitted an invoice in the amount of \$650.00, of which the Parents have paid \$40. Therefore, \$610 is owing on the bill. (Parent's #56)

Testimony). She explained that the Student is at risk for not “hearing” verbal information, especially in a noisy environment. (Id). Auditory discrimination is a pre-linguistic/pre-attentive skill. (Id) Auditory overload can cause fatigue; and students with CAPD (like the Student) present with inattentive behaviors, difficulty with verbal instructions, expressive/receptive language disorders, and reading issues (especially decoding and comprehension). (Id) ██████ testified that the indicators for the Student’s CAPD were recorded in the Student’s school records as early as when he attended his prior school district, and continued in the School District’s records. (██████ Testimony, Parent # #1, 2, 4, 8, 9, 15, 21, 24, 25, 58)<sup>21</sup> ██████ recommends a multi-sensory reading program (such as Wilson), assistive technology, CAPD remediation, as well as classroom interventions. (Parent #55, ██████ Testimony).

- c. *Occupational Therapy Evaluation.* ██████ evaluated the Student 2017. (██████ Testimony, Parent’s #77). She administered the Sensory Profile Adolescent/Adult Report, selected portions of the Bruininks-Oseretsky Test of Motor Proficiency-2 (BOT-2), the Developmental Test of Visual Perception-Adolescent/Adult (DTVP-A), and the Lowenstein Occupational Therapy Cognitive Assessment (LOTCA) to the Student. She concluded that the Student becomes distracted by random stimuli to the extent that focus on the task is lost. (Id) He is seeking sensory input (such as touching

---

<sup>21</sup> ██████ explained that for the Student who has CAPD in addition to autism, learning disabilities, language disorders and ADHD, it is important to continually assess his progress to determine which disability is “driving the bus.” (██████ Testimony) That way the Student’s IEP Team would have the necessary information to create an appropriate educational plan. (██████ Testimony)

his hair), and then becomes distracted by that input. She also considered his constant hair touching a tic. His visual motor and language concerns contribute to memory issues. His manual coordination and body coordination are both below average. His fine motor information is poor, the utilization of object is poor, and his symbolic actions are very poor. He also was able to appropriately complete many portions of the tests administered. (Id) However, he struggles with broader concepts of orientation and time, cannot determine Left and Right on others, and bilateral skills. He has difficulty with time, money, using a menu and [REDACTED] recommended that goals are needed in this area. In addition to noting that the School District OT evaluation was not thorough, [REDACTED] testified that it looks as though several sessions of OT were missed during the Student's 8<sup>th</sup> grade year. ([REDACTED] Testimony, School District #12, Parent's #77) [REDACTED] recommended that the Student OT for 60 mpw at school and in the following amounts outside of the school day for up to two years: 156 hours of OT to be delivered in increments of 1-2 hours/week during the school year and more in the summers. ([REDACTED] Testimony)<sup>22</sup>

- d. *Speech Language/Assistive Technology Evaluation.*<sup>23</sup> [REDACTED] evaluated the Student in February and August 2017. ([REDACTED] Testimony, Parent

---

<sup>22</sup> [REDACTED] submitted an invoice for her evaluations in the amount of \$5637.50. (Parent's #77) The Parents have paid \$2500, which leaves \$3147.50 due. ([REDACTED] Testimony)

<sup>23</sup> While the Student was attending [REDACTED] School, he was also having private speech therapy with [REDACTED]. (Parents # 71). [REDACTED] and [REDACTED] (the School District speech therapist) had a good collaborative relationship and exchanged information about the Student. From June 2015 through July 2017 the Parent's paid \$2039.82 ([REDACTED] Testimony, [REDACTED] Testimony, School District ## 9, 28, 30, and Parents #71).

#69).<sup>24</sup> She administered the Peabody Picture Vocabulary Test IV (PPVT-IVB); the Expressive Vocabulary Test 2; the Test of Auditory Perceptual Skills (TAPS-3), the Clinical Evaluation of Language Fundamentals -5 (CELF 5), and the Stuttering Severity Instrument-4 (SSI-4). (Id).<sup>25</sup> She concluded that the Student's single word vocabulary and expressive vocabulary are significantly below the average range. His overall language abilities are severely impaired, as were his reading skills. He cannot understand inferential reading material or make inferences. The highest score he received on the CELF-5 put him in the 5<sup>th</sup> %ile (the lowest had him lower than the bottom .1%ile. (Id) He also showed significant difficulty with recall and understanding even the most basic auditory material. (Id) He was diagnosed with having a mild stutter. (Id) [REDACTED] also performed an Assistive Technology Evaluation, and she concluded that the proper AT would be beneficial to helping him improve his reading. (Id). [REDACTED] recommends that the Student receive 90 mpw of speech/language services in the school setting to address his specific speech/language deficits, plus an additional 30 mpw of speech/language therapy at school to help improve his pragmatic and social speech with peers. (Id). She recommends that the Student be provided with the following Assistive Technology: a

---

<sup>24</sup> [REDACTED] testified that between the two testing sessions (the first where the Student was at [REDACTED] School and the second visit after he had attended [REDACTED]), the Student had made noticeable improvements in many of his off-task behaviors. ([REDACTED] Testimony).

<sup>25</sup> [REDACTED] attempted to administer the metalinguistic Test of the Clinical Evaluation of Language Fundamentals, 5<sup>th</sup> edition (CELF-5); however, she was unable to demonstrate that he understood the testes that were required. ([REDACTED] Testimony; Parent's #69).

Chromebook with access to scanning software, screen reading software, talking word processor (e.g. Write Outloud 6), word prediction software (e.g., CoWriter) access to Google Docs and Google classroom a subscription to bookshare.org and an iPad for school use. (Id) Finally she recommends the following compensatory education to be provided outside of the school setting: FastForWord software and one (1) hour/week with a trained provider for 50 sessions. (Id)<sup>26</sup>

- e. *Social Work Evaluation.* (Parent's #82) [REDACTED] evaluated the Student in the spring of 2017, and wrote a lengthy evaluation report.<sup>27</sup> She administered the Beck Youth Inventories, 2<sup>nd</sup> Edition (BYI-II), the Achenbach Child Behavior Checklist (CBCL), the Conners-3 Parent Report Short Form and the Social Responsiveness Scale, 2<sup>nd</sup> Edition (SRS-2). She also reviewed school records, interviewed the Parents, the Student and his teachers and made classroom observations. (Parent # 82, [REDACTED] Testimony). She concluded that the Student has poor self-concept, that he is inattentive, impulsive, and that he has a learning disability, and that he does not have peer relationships. (Id)<sup>28</sup> She created a Functional

---

<sup>26</sup> [REDACTED] submitted an invoice for \$2300, all of which was paid by the Parents except for \$615, which leaves \$1685 owing. ([REDACTED] Testimony)

<sup>27</sup> [REDACTED] submitted an invoice for \$5900, which was paid by the Parents. ([REDACTED] Testimony)

<sup>28</sup> [REDACTED] testified that when she observed the Student in his classroom at [REDACTED], he was isolated and did not have peer interactions. ([REDACTED] Testimony). Moreover, the School District did not put on any credible evidence that the Student is having positive peer relationships with his peers at school. [REDACTED] did testify that while the Student liked [REDACTED] (and had some developing peer relationships there), he considered [REDACTED] to be a "hard" school where the teachers made him work. (Id). He told [REDACTED] that he missed [REDACTED], where he was not required to work as hard. (Id).

Behavioral Analysis as part of her evaluation. (Id)<sup>29</sup>. She concluded that the Student engages in “a repertoire of repetitive behaviors that are significantly impacting his ability to function in the school setting.” (Id) She noted that he is becoming increasingly dependent on adults. She notes that the paraprofessional support, while helping the Student attend in class, is not helping him become more independent. (Id) She concludes that much of his behavior is sensory based as he cannot regulate sensory input. (Id) She recommends direct social work services to address social deficits with peers and adults. She recommends 60 mpw of direct individual social work services in addition to another 60 mpw of group social work services (which could be given during the school day). She also recommends 15 mpw of consultive social work services with school staff. As compensatory education, ██████ recommends that the Student receive 60 mpw of private social work services with a Licensed Clinical Social Worker, Certified School Social Worker or a School Psychologist. (Id)

- f. *Neuropsychological Evaluations.* During the Statutory Period the Student was privately evaluated three times: by ██████ (who was not called as a witness) in September 2016 (Parent’s # 32),<sup>30</sup> ██████ (who was not

---

<sup>29</sup> It appears that ██████’s Functional Behavior Assessment (“FBA”) in her evaluation report is not a true FBA pursuant to 20 U.S.C. §1414(d)(3)(B)(1), in that it was done pursuant to an IEP and had input from various stakeholders in its conception and implementation. Nevertheless, ██████’s FBA is a useful way to break down the Student’s behavior for further analysis.

<sup>30</sup> The Student was evaluated by ██████ (who was not called to testify) and his partner ██████. The Student’s parents testified that at this evaluation, ██████ was the primary evaluator of the Student, and that the Student had very little contact with ██████ (Mother’s Testimony; Father’s Testimony).

called as a witness) in November-December 2016 (Parent's #48); and by [REDACTED] (who testified at hearing) in 2017. (Parent's #88).

- i. [REDACTED] *Evaluation:* [REDACTED] evaluated the Student by administering the WISC-V, the WIAT-III, the NEPSY II Developmental Tests of Neuropsychological Function (NEPSY II), the Connors Continuous Performance Test, the Beck Youth Inventory, the VMI, the GARS and the GARS. The Student tested extremely low in all of these tests (for reading, written expression and math skills), and met the criteria for mild autism. (Parent's #32). [REDACTED] concluded that the Student had a depressed IQ score, he had weak language skills, weak processing skills, deficits in attention and executive functioning, processing spoken language, and a specific learning disability in reading, written expression and math. He diagnosed with ADHD and given a provisional motor tic disorder. (Id).
- ii. [REDACTED] *Evaluation:* [REDACTED] (who did not testify at hearing) administered the California Verbal Learning Test- Children's version (CVLT-C); the Child and Adolescent Symptom Inventory – Parent Checklist (CASI-5); the Comprehensive Test of Phonological Processing -2 (CTOPP-2); the Developmental Test of Visual Perception- Adult (DTVP-A), Gray Oral Reading Tests, 5<sup>th</sup> edition (GORT-5), the Grooved Pegboard Test, the Hooper Visual Organization Test; the Rey-Complex Figure Test (RCFT); the Test of Word Reading Efficiency, 2<sup>nd</sup> Edition (TOWRE-2) and the WISC-V. The results of these tests echo [REDACTED] evaluations: the Student

has a severe language disorder, has academic achievement scores in the very low range, has poor expressive and receptive language skills, has poor written language skills, has visual and auditory processing deficits, is inattentive, and has low average skills in adaptive behavior. ██████ diagnosed the Student with a profound speech and language impairment. (Parent's # 45).

- iii. ██████ *Evaluation*.<sup>31</sup> ██████ evaluated<sup>32</sup> the Student from February through July 2017. (██████ Testimony, Parent's #83). She administered the Leiter International Performance Scale- Third Edition (Leiter-3), the Children's Memory Scale (CMS, selected subtests), Test of Everyday Attention for Children (TEA-Ch, selected subtests), Delis-Kaplan Executive Function System (D-KEFS, Selected Subtests), Wisconsin Card Sorting Test (WCST), the Wide Range Assessment of Visual Motor Abilities (WRAVMA), Developmental NEUROPSYCHOLOGICAL Assessment, 2<sup>nd</sup> Edition (NEPSY-II, selected subtests), Woodcock Johnson Tests of Achievement, 4<sup>th</sup> Edition (WJ-IV, Form B, Selected Subtests), Test of Word Efficiency, 2<sup>nd</sup> Edition (TOWRE-2, Form B), Gray Oral Reading Test, 5<sup>th</sup> Edition (GORT-5, Form B), Autism Diagnostic Observation Schedule, 2<sup>nd</sup> Edition (ADOS-2, Module 3), Test of Memory Malingering (TOMM). ██████ also gave the Student and

---

<sup>31</sup> ██████ submitted an invoice for \$8,937.50, which has not been paid.

<sup>32</sup> ██████ did not personally administer all of the assessments in her report, but only administered the ADOS-II. She testified that other qualified practitioners in her practice administered the assessments to the Student while she was on site; and, that she personally checked their work. (██████ Testimony)

Parents additional questionnaires, and made a classroom observation (Id). █████ concluded from her evaluations that the Student's IQ was in the low average range, that he had significant memory issues, that he has difficulty encoding auditory-verbal information, that he has a significant language disorder, that he has ADHD, that he is inattentive, that he has processing delays, that he has learning disabilities in reading, written expression and math, that he has autism, and that he has anxiety. (Id). █████ explained at hearing that by giving the ADOS-2 she felt confident in an autism diagnosis due to the fact that the Student has been an English speaker for over 10 years, had been a family and properly socialized for over 10 years. (█████ Testimony)<sup>33</sup>. █████ testified that, with the ADOS-2, any trained psychologist would have been able to make an autism diagnosis (even considering the Student's history) after the third year after he had been adopted, or since he was nine years old. (Id) █████ recommended that the Student receive 120 mpw of multi-sensory reading, as well as a behavior management plan and social work (all of which could be given during the school day). She concurs with █████'s recommendations regarding CAPD. (Id).

## **2. Relevant IEPs.**

---

<sup>33</sup> Specifically, █████ testified that after three years of being an English speaker, of being in a family and of learning social skills, that ~ especially with the ADOS-II ~ the Student could have been confidently diagnosed with autism. (█████ Testimony) By █████'s Testimony, the Student could have had an accurate Autism diagnosis by the age of nine.

The Student had several IEPs during the Statutory Period. In all of the relevant IEPs, the Student's eligibility designations were: Specific Learning Disability, Other Health Impairment, and Speech/Language Impairment<sup>34</sup>. The individual IEPs will be considered in chronological order:

- a. February 24, 2015 IEP (School District #3, Parent #15): This IEP was originally convened in December 2014 but continued to and finalized on February 24, 2015. This IEP predates the School District's 2015 re-evaluations of the Student. It was his first IEP upon entering the School District, and the Student was in 6<sup>th</sup> grade. (Mother's Testimony, ██████ Testimony, ██████ Testimony). The Student's placement was in a general education classroom with shared paraprofessional support for specific tasks, and an OT, speech and social worker consult with the special education teacher. (School District #3, Parent's #15). The IEP makes note that the Student does not speak very much, that he has a stutter and a tic<sup>35</sup>. (Id). It notes that for all academic subjects, he is well below grade level. It does note that his independent reading level is mid-3rd grade. It notes that his curriculum will be modified in Language Arts/Reading,

---

<sup>34</sup> For none of the Student's IEPs was he given the eligibility designation of autism or CAPD. The Student has never had an FBA and none of his IEPs contain a BIP.

<sup>35</sup> All of the Student's IEPs re-iterate that he has difficulty attending, that he is highly distractible, that he is very dependent on adult assistance to complete tasks, and that he needs significant redirection to complete tasks. (School District ##3, 5, 13, Parent #27). Additionally, all of the Student's IEPs indicate that he has behaviors that interfere with his education such as touching his hair and looking into reflective surfaces. (Id). They all describe that he has few friends and needs adult assistance to appropriately socialize with peers. (Id) None of the Student's IEPs have a provision for Extended School Year, despite testimony from the Student's case manager and special education teacher that he needed it. (██████ and ██████ Testimony, Parent's #28). None of the Student's IEPs have direct social work minutes. All of the Student's IEPs have him participating in FP Reading program, and not a multi-sensory reading program such as Wilson. (Id)

writing (across curriculum) and math. He received 150 mpw of writing support in the classroom and was removed from the general education setting to receive reading and math special education instruction for 600 mpw. He received speech/language direct support services for 15 mpw (in a general education setting) and 45 mpw in a separate setting. (Id) The IEP notes that because of his low reading level, he cannot access 6<sup>th</sup> grade curriculum through grade-level reading (Id). He has goals in the areas of reading, math, writing, speech/language (articulation)<sup>36</sup>. The Student participated in a FP Reading Program, which is not a multi-sensory reading program. (Id., ██████ Testimony).

- b. March 20, 2015. This IEP was started on March 13, 2015 (Eligibility Portion (School District #4)), and the IEP was reconvened and completed on March 20, 2015. (School District #5, Parent's #21). The Student's 2015 Evaluations had been completed by this IEP, and the March 20, 2015 contains the results of those evaluations. The IEP notes that Assistive

---

<sup>36</sup> The service logs for the related service providers were entered into evidence: Parent's #48, School District ## 12, 32. It is not apparent that all of the time entered into the logs was done so in real time (See, Parent's 48). For consult minutes in OT and Social work, there are several missing entries altogether. The Student missed eleven OT sessions from May 2015 through March 2016. (Parents #77) The Hearing Officer does note that, especially for speech/language sessions, related services were provided by individuals that were not trained and certified speech language therapists, but rather college and Master's program students ("Interns") under the sometimes direct and sometimes indirect supervision of the Student's speech therapist ██████. (██████ Testimony, School District #32). ██████ testified that it is a common practice to allow Interns to deliver services directly to the Student; and that after she had introduced them to the Student and made an initial observation, she would allow them to work alone with the Student. (██████ Testimony). ██████ also concurred generally that it was an acceptable practice; however, ██████ also testified that in her professional judgement, letting a college/Master's program student give direct speech/language services to the Student was improper, given the complexity of his case, and his extreme need for speech therapy. (██████ Testimony.). The service logs show that 41 of the 77 total therapy sessions (53%) were either co-run with an intern, or run with the intern working alone with the Student. (Parent's #32). The Parents report that no one told them that Interns would be delivering speech therapy to the Student. (Father's Testimony). There was no evidence that the Interns inappropriately provided speech therapy to the Student.

Technology (AT) would be required to allow the Student to access the curriculum, but also states that no specific AT is recommended. (Id) The IEP does note that the Student has available AT in the classroom that he can access such as headphones, a printer, a tape recorder/CD/Digital recorder and an iPad. (Id.)<sup>37</sup> The academic and speech goals were not changed, but an occupational therapy goal was added (to have a “ready to work” body). (Id) His writing support (in the general education classroom)<sup>38</sup> was increased to 300 mpw, and OT was added (in a separate setting) for 30 mpw. All of his other specialized services and placement remained the same.<sup>39</sup>

---

██████ noted in her evaluation report that when she observed the Student at ██████ school it was “painful” to witness how off task he was. (██████ Testimony) She noted that the Student did not seem comfortable or fluent with his AT options in the classroom, and that it did not look to her as though it was familiar to the Student or his staff. (Id)

<sup>38</sup> The Student’s writing goals for his 2015 IEP seems ambitious in light of his inability to produce enough of a writing example for the School District evaluator to assess him: “Given mini-lessons delivered by his general educator, assistance in keeping an organized notebook/writing life, and repeated instruction as needed, [the Student] will write informative/explanatory texts to examine a topic and convey ideas and information clearly, supporting a point of view with reasons and information...scoring at least 75% on a teacher-made rubric that adheres to at least a mid-4<sup>th</sup> grade standard” (School District #5) One year later, in 2016 his writing goal is eliminated. (School District #13) In the Student’s March 2016 IEP Program, he has a goal for social studies that appears to be a writing goal, albeit about history. (School District #13): “When given a history/social studies passage [the Student’s] reading level [which is not set forth in the PLAAFP], he will read the passage independently and will write informative/explanatory tests to examine a topic and convey ideas and information clearly scoring 75% on a teacher-made rubric that adheres to a 5<sup>th</sup> grade standard.” (Id) Yet the same IEP notes that has significant issues with expressing himself in basic writing (Id) which makes the social studies goal questionable on its face.

<sup>39</sup> The Student’s reading goals for 2015 and 2016 only appear to address fluency. There is no goal for phonemic awareness or comprehension. (School District ##5, 13) For example, for the Student’s March 2016 IEP the reading goal is: “Given reading instruction by a special educator using specifically leveled reading materials, [the Student] will read aloud from text written at a Guided Reading Level R (4<sup>th</sup> Grade) with at least 98% accuracy.” (School District #13) This goal does not address whether the Student comprehends what he is reading (which was described in the same goals Present Level of Academic Achievement and Functional Performance (“PLAAFP”) as missing a “major point” of the text). It should be noted that the Student’s IEPs indicates that he is a “multisensory learner who requires a well-rounded sensory experience which includes visual, auditory and kinesthetic experiences.” (School District ##5,13) The IEPs however state that the Student is being provided with a FP Reading Program (Id), not a multisensory program such as Wilson.

- c. September 11, 2015 IEP (Revision) (School District #14). The IEP was revised in September 2015 to provide additional paraprofessional support to the Student. There are no other changes to goals, accommodations or placement. (Id).
- d. March 29, 2016 IEP (School District #13, Parent #25). The Student's IEP was updated at this annual review. The Student's independent reading level (in the 7<sup>th</sup> grade) was still around the 3<sup>rd</sup>- 4<sup>th</sup> grade level. (Id) The Student has goals in Speech/Language, English, Mathematics, Transition, Social Sciences. All of the Student's academic goals still have him performing at essentially the same level as his last IEP. (Id) He still has consulting services in speech/language, OT and social work for 15 minutes quarterly. The IEP does not have a writing goal, and there is no longer minutes for writing support in the general education setting. However there is social studies support in the general education setting at 150 mpw. The Student still receives 600 mpw of special education outside of the general education setting (as well as 3 mpw of transition services outside of the general education setting). He still has modified curriculum. He has a Transition Plan attached as part of this IEP, however he has not had any transition assessments, there are no planned courses of study filled out, and the goals involve the Student "beginning to investigate" various programs or areas of interest. (Id).
- e. March 30, 2017 IEP (DRAFT). This IEP does not contain a signature page, and every page is marked DRAFT. The meeting was cancelled and rescheduled several times (See Parent's #27) by the Parents due to this

litigation. The Parents and the School District finally agreed upon May 25, 2017 for the meeting, but that meeting never occurred. The parties introduced the DRAFT IEP into evidence, despite the fact that no meeting to discuss this draft occurred.<sup>40</sup> On May 11, 2017 the School District sent correspondence to the Parents indicating that it supported the Parent's unilateral placement at [REDACTED] on April 21, 2017. (School District #63, [REDACTED] testimony)

- f. August 23, 2017 IEP (DRAFT). (Parent's #67) This is a draft IEP for [REDACTED]. This IEP meeting has never been held due to scheduling difficulties with the Parents and the School District Psychologist. (Mother's Testimony). See Footnote 6, above, for a description of the IEP.

### **3. Student's and Parent's Requests for Records.<sup>41</sup>**

---

<sup>40</sup> At hearing there was considerable testimony about the events leading up to the DRAFT of the March 2017 IEP. Beginning in November 2016 the Parents had sent an email expressing extreme dissatisfaction with the Student's programming. (School District #26, Father's Testimony, [REDACTED] Testimony). The Parents and the School District administrators explored several alternatives for the Student, including dual enrollment or homeschooling him so he could attend a Lindamood Bell program. (Id, [REDACTED] Testimony). Concurrent with these conversations, the Parents were exploring other alternatives for the Student including [REDACTED], where the Student is presently attending. (Id) The Hearing Officer finds that the School District administrators were reasonably responsive to the Parent's concerns. However, due to the delays caused by this process, as well as the Parent's private evaluations, and the availability of School District personnel to attend IEP meetings, the March 2017 IEP never took place; nor have there been any IEPs to consider the private evaluation reports that were received by the School District. (Parents ##41, 43, 59, 64-66)

<sup>41</sup> The Parents have had an ongoing dispute with the School District over the production of records, which has necessitated action from this Hearing Officer. *See*, Order dated August 10, 2017. This Hearing Officer has given both of the parties leave to submit evidence at hearing that either (a) the School District failed to produce Student records pursuant to the IDEA (or in compliance with the Hearing Officer's Order); or (b) that the School District did actually produce the necessary records. Despite this leeway, the parties did not re-introduce any of the exhibits from the pre-hearing motions/responses on this issue into evidence. However, there has been testimony and documentary evidence that was entered into evidence at hearing. The Hearing Officer will only consider the evidence presented at hearing in deciding this issue.

The Parents have made a written request for the Student's records in January 2017. (Mother's Testimony, Parent's #33). The School District does not disputed that the Parents made a proper written request for the Student's school records. The School District has a policy regarding the production of records. (Parent's #61). Many of the Student's records are maintained electronically by the School District. (Parent's #61, ██████ Testimony). Emails are maintained for one (1) year unless there has been a litigation hold. (Id.) There was no evidence that a litigation hold was placed on the Student's records after the initial DPCN was filed on January 23, 2015. Counsel for the School District has repeatedly represented that she has asked School District personnel for records and has produced all records provided to her by School District personnel.

Several witnesses testified as to emails and other Student records that were not produced at hearing, or were produced as part of the 5-day prehearing disclosures and entered into evidence at hearing. (█████, ██████, ██████ Testimony, ██████ Testimonies.) For example, ██████. testified that she produced all of her evaluation protocols to the School District's attorney, they were not produced to the Parent, nor part of the five (5) day disclosure by the School District. (█████ Testimony).

#### **4. Production of Required Information to Parents.**

Both Parents testified that they saw IEP report cards and other IEP documents for the first time at hearing. (Mother's Testimony, Father's Testimony). For example, the Student's Mother testified that the only IEP Report Card she received was in November 2016, when at least three should have been issued for that year. (Mother's

Testimony, Parent's #37.)<sup>42</sup> There were no IEP Report Cards entered into evidence for the 2015-2016 school year by the School District, to counter the Mother's Testimony that she only received one IEP Report Card in 2016. Other IEP report cards were incomplete (Parent's #38). In addition, the Student's Father testified at hearing that he was unaware that Interns were providing the Student's speech therapy at school, and that if had been aware of that, he would have objected. (Father's Testimony)<sup>43</sup>.

**5. Lack of IEP Meetings to consider the Parent's private evaluations, change of placement to [REDACTED].**

As stated above, there has yet to be an IEP to consider the outside evaluations by the Parent's evaluators. The Parents did provide the School District with copies of their private evaluation reports as they were completed, beginning in October 2016 (with [REDACTED]'s Report). (Parents #31, 33 and 34, School District #7, Mother's Testimony, [REDACTED] Testimony). [REDACTED], a School District administrator, testified that he told the Student's principal, [REDACTED] that they needed to schedule an IEP meeting to consider the outside evaluations. ([REDACTED] Testimony). Yet the School District did not put on any documentary or witness testimony to indicate that they were attempting to schedule an IEP meeting prior to the Student's annual review in March 2017. There is evidence that the School District was attempting to schedule the March 2017 without success due to conflicting schedules, mostly on the part of the Parents. (School District ##8, 26, 29, Parent's ##

---

<sup>42</sup> The Student's 2015 and 2016 IEPs required that progress on goals be reported quarterly. (Parent's ## 5, 13)

<sup>43</sup> The Student's Father also testified that when he was informed at the March 29, 2016 IEP Meeting that his son was reading at the 3<sup>rd</sup>-4<sup>th</sup> grade level, it was profoundly moving to him that his son was not making progress. (Father's Testimony).

65, 69, Mother's Testimony, Father's Testimony, ██████ Testimony, ██████ Testimony, ██████ Testimony). In December 2016 and January 2017 the Parents, along with School District administrators were actively looking for other placement options for the Student, including Lindamood Bell. (Parent's ##26, 29, Mother's Testimony, Father's Testimony, ██████ Testimony, ██████ Testimony). Concurrently, the Parents gave their unilateral placement notice for ██████ (Parent's #64). The parties could not settle on a mutually agreeable date for the March 2017 IEP (School District ##8, 26, 29, Parent's ## 65, 69), and through counsel, the date for the Student's IEP continued to be debated between the parties until August 2017 (after the Student had already begun attending ██████). (Id.). The August 2017 IEP meeting never took place due to the inability of the School District to obtain a school psychologist (Mother's Testimony) and was never rescheduled. To date, the Student's IEP team has never formally met to have an IEP meeting to consider the Student's private evaluations, or to formalize his placement at ██████ (Mother's Testimony)<sup>44</sup>

### **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:

The purpose of the *IDEA* is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education

---

<sup>44</sup> The Parent has paid ██████ \$3669.00 to date for his tuition for April-June 2017. (Parents #71). The Parent has also incurred \$1198.40 in reimbursable transportation costs transporting the Student to and from ██████ (Parents # 72). To date the School District has not made any tuition payment to ██████. (█████ Testimony).

and related services designed to meet their unique needs.”<sup>45</sup> The Congressional purpose of providing access to a FAPE stems from the requirement that the education provided through the IEP confer some benefit to the child.<sup>46</sup>

In deciding whether the School District provided a FAPE to the Student, the inquiry is limited to (a) whether the School District complied with the procedures set forth in the IDEA; and, (b) whether the Student’s IEP is reasonably calculated to enable the Student to receive an educational benefit.<sup>47</sup> Under the latter substantive prong, the School District need not maximize the potential of the Student; the School District has met its burden under the *IDEA* if it provides a meaningful educational (i.e. non-trivial) opportunity,<sup>48</sup> and is appropriately ambitious in light of the Student’s circumstances.<sup>49</sup>

Regarding the allegations of a procedural violation of the *IDEA*, this Hearing Officer may find a violation of FAPE only if the alleged procedural inadequacies (a) impeded the Student’s right to a FAPE, (b) significantly impeded the Parents’ opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or (c) caused the Student a deprivation of an educational benefit.<sup>50</sup> In short, this

---

<sup>45</sup> *Bd. of Education v Rowley*, 458 U.S. 176-179-71 (1982); *Hinson v Merritt Educ. Ctr.*, 579 F.Supp.2d 89, 98 (2008), citing 20 U.S.C. §1400(d)(1)(A).

<sup>46</sup> *Rowley*, 458 U.S. at 200; *Hinson*, 579 F.Supp.2d at 98.

<sup>47</sup> *Rowley*, 458 U.S. at 206-07.

<sup>48</sup> *P. v Newington Bd. of Educ.* 546 F.3d 111 (2<sup>nd</sup> Cir. 2008).

<sup>49</sup> *Andrew F. v Douglas County School District*, 137 S. Ct. 988 (2017).

<sup>50</sup> 34 C.F.R. §300.513(a)(2).

Hearing Officer would have to conclude that the procedural violations affected the Student's substantive rights under the *IDEA*.<sup>51</sup>

### **Discussion**

***Issue #1: Whether the evaluations of the Student conducted by the School District on March 13, 2015 were appropriate; and whether from January 23, 2015 through the present (“Statutory Period”) the School District appropriately evaluated the Student (and/or re-evaluated the Student) in all suspected areas of disability?***

The Student submits that for the Statutory, the School District failed to evaluate the Student appropriately in all areas of suspected disability; that the evaluations the School District had performed during the Statutory Period were inappropriate and therefore denied the Student a free appropriate public education (“FAPE”); and, that the School District should have agreed to the Parent’s request for an IEE. The Parents/Student request a ruling in their favor; and, further request that the Hearing Officer reimburse the Student’s out-of-pocket private evaluation costs or pay the private providers directly.

The School District submits that during the Statutory Period the Student was evaluated in all suspected areas of disability; and, therefore was not denied a FAPE. The School District further submits that the school-based evaluations for the Student were administered appropriately and that the Student was not entitled to an IEE. The School District requests a ruling in its favor and that Hearing Officer deny all requested relief by the Parent, including reimbursement for the Parent’s private evaluations.

#### ***a. Evaluations Generally***

---

<sup>51</sup> *Lesene v District of Columbia*, 447 F.3d 828, 834.

Under the *IDEA*, the School District had an affirmative obligation to perform a full and individual evaluation of the Student in all suspected areas of disability before the provision of special education and related services.<sup>52</sup> A School District also has an obligation to re-evaluate the Student if it determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation.<sup>53</sup> An evaluation is defined as the procedures used to determine whether a child has a disability, and the nature and extent of special education and related services the child needs.<sup>54</sup> A parent or a student may obtain an independent educational evaluation of the Student at public expense if they disagree with a public evaluation that has already been given to a child and a school district cannot show that it was appropriate.<sup>55</sup>

Specifically the standards for an appropriate evaluation<sup>56</sup> require a school district to use a variety of assessment tools, to gather relevant functional, developmental and academic information about the child (including information from the parent), use technically sound instruments to determine factors such as cognitive, behavioral, physical and developmental factors which contribute to a disability determination; and to refrain from using any single measurement or assessment as the sole criterion for a determination of disability or an appropriate program.<sup>57</sup> The measures used for

---

<sup>52</sup> 20 U.S.C. §1414(a)(1)(A).

<sup>53</sup> 34 C.F.R. §300.303.

<sup>54</sup> 34 C.F.R. §300.15.

<sup>55</sup> *Jack B v. Council Rock Sch. Dist.*, (2008 WL 4489793)

<sup>56</sup> Found at 34 C.F.R. §§300.304-306

<sup>57</sup> 34 C.F.R §300.304(b)(1-3); *In re Great Valley Sch. Dist.* 114 LRP 49527 (SEA Pa. 2014)

evaluation must be valid, reliable, and administered by trained professionals in accordance with the instructions provided for the assessments; must assess the child in all suspected areas of disability; must be sufficiently comprehensive to identify all of the child's special education and related services needs, and provide relevant information that directly assists in determining the child's educational needs.<sup>58</sup>

“School authorities cannot properly address problems which they do not understand. The failure to conduct an appropriate evaluation will result in inconsistent and inadequate programming.”<sup>59</sup> This Hearing Officer concludes that the School District was under an affirmative duty to re-evaluate the Student in between triennial evaluations, in the event the Student demonstrated that he needed further evaluation in any area of suspected disability.<sup>60</sup>

***b. School District Evaluations and FAPE.***

The Hearing Officer agrees with the School District that its evaluations in 2015 accurately allowed the Student's IEP Team identify the Student as having ADHD, of having a significant expressive and receptive speech and language disorder, and of having a specific learning disability in reading, written expression, and math. (School District ##4, 5). However, as early as 2015 (and in the intervening years since) the School District had the necessary information to suspect that the Student other areas of disability, and therefore to evaluate him appropriately for each of them (either in 2015 or at any other time thereafter):

---

<sup>58</sup> 34 C.F.R. §§300.304(c)(1)(ii iv), (2), (4), (6) and (7).

<sup>59</sup> *Bd. of Educ. of Oak Park and River Forrest High School Dist. No. 200 v Illinois State Board of Educ.* 21 F. Supp. 2d 862, 870 (N.D. Ill. 1998).

<sup>60</sup> *See, Kevin T. v Elmhurst Community Unit School Dist. No. 205*, 36 IDELR 153 (N.D. Ill. 2002).

(i) *Autism.* As early as 2015, the School District was aware that the Student displayed autistic characteristics. (School District #22). The School District’s psychologist administered two separate autism rating scales, the CARS and the GARS, and the results of these two tests indicated that the Student had mild to moderate autism. (Id) ██████ testified that, in her professional judgment, these scores could be ignored because of the Student’s extreme language deficits and because of his social history, especially his late acquisition of English. (█████ Testimony)<sup>61</sup> However, as ██████ Testified, by 2015 the Student had been in the United States and adopted by his Parents for nearly six (6) years. It is fairly obvious that the School District was aware that the Student met the criteria for an autism diagnosis in 2015. Moreover, if there was any doubt as to whether the Student’s history or other disabilities were complicating an autism diagnosis, the School District psychologist should have recommended further testing, perhaps with the ADOS-II (a test which her training and certification should have been known to her) to be certain if the CARS and

---

<sup>61</sup> ██████’s was not the only professional who made the decision to rule out autism without further testing, due to the Student’s social history. ██████ made the same decision when his ratings scales also clearly indicated that the Student had autism (Parent’s #32). ██████ evaluation didn’t even choose to look at autism. (Parent’s #45). However, the Hearing Officer is persuaded by ██████’s testimony that the ADOS-II is the “gold standard” of tests, and that the scores of the ADOS-II were clear about an autism diagnosis. (█████ Testimony). In short, this Hearing Officer concludes that both ██████ and ██████ were incorrect in choosing not to do the appropriate testing to rule as important of a diagnosis of autism in or out. The Hearing Officer is mindful that the School District was sensitive to the Parent’s ongoing concerns about their son. (█████ Testimony). However, both Parents testified at hearing that they were not qualified to know what their son needed and that they considered his diagnostic process a “journey”. (Mother’s Testimony, Father’s Testimony). No matter how much the School District personnel sympathized with the Parents, the *IDEA* requires the School District to assume leadership in the evaluation process. 20 U.S.C. §1414(a)(1)(A). *See, Robertson County School System v Patrick King, Jr.*, 24 IDELR 1036 (6<sup>th</sup> Cir. 1996) (“a parent who is a neophyte to special education...cannot be expected to appear and say ‘My child is eligible for special education services under IDEA..’”)

GARS data indicating that the Student was autistic was reliable. Yet the School District did no further testing in 2015 to rule autism in or out with certainty; and the School District did not revisit the autism diagnosis at any future time during the Statutory Period, despite ample evidence that the Student demonstrated autistic characteristics. (School District ##13, 14) The School District had the necessary evaluation data on the Student to realize that autism continued to be an area of suspected disability since 2015. This Hearing Officer finds the School District should have continued to evaluate the Student to collect necessary evaluation data to rule autism in or out with certainty in 2015 or thereafter. Autism is a pervasive developmental disorder that would have had a profound impact on the Student's educational planning had the Student's IEP Team accepted it as an eligibility designation in 2015. As will be discussed below, several necessary educational interventions that would have been necessary should the Student have been found eligible in 2015 under the autism disability designation were not in any of the Student's IEPs. *This Hearing Officer finds that by not following up on the CARS and GARS data with additional evaluations in 2015 (or in the years thereafter) constituted failure to evaluate the Student in all suspected areas of disability; and thus constituted a denial of FAPE to the Student.*

- (ii) *Central Auditory Processing Disorder.* [REDACTED] testified that the Student was exhibiting signs of CAPD in his previous school district. ([REDACTED] Testimony, School District ##1, 2). Moreover, she noted that the Student's evaluators and IEP team noted that the Student was inattentive, had

difficulty reading (especially with decoding, vocabulary and comprehension), that he had a learning disability in reading and written expression. (█████'s Testimony, Parent ##4, 8, 9, 15, 21, 24, 25, 58). None of the School District witnesses could account for why the Student wasn't evaluated for CAPD. None of the evaluation reports (especially in the area of academic achievement and speech/language) make any mention of CAPD, even to eliminate it as a diagnosis. (School District ##3, 87). Identifying CAPD as a diagnosis would have supported the reading data that the Student had difficulty with decoding, spelling and comprehension, and would have allowed the Student's IEP Team to address his reading difficulties with a multi-sensory reading program, assistive technology and other appropriate classroom interventions. (█████ Testimony, Parent's #55). *This Hearing Officer finds that the School District failed to evaluate the Student for CAPD in 2015, and thus denied him a FAPE.*

- (iii) *Assistive Technology ("AT")*: Despite the fact that the Student was referred for an AT evaluation in 2015, none was ever completed. █████ and the Student's Mother both testified that at the time the main focus for an AT Evaluation was to address the Student's articulation issues. (█████ Testimony, Mother's Testimony). However, the AT referral form filled out by █████ clearly indicates other areas of need in addition to articulation (e.g., distractibility, difficulty reading and writing). (Parent's #18) Almost all of the Student's private evaluators indicate that the Student needs AT in order to access his education. (See, █████ Testimony, █████ Testimony, █████ Testimony). The *IDEA* defines Assistive Technology as "any item,

piece of equipment or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.”<sup>62</sup> There is ample evidence to conclude *that the failure of the School District to complete an Assistive Technology evaluation in 2015 or in any year after constituted a denial of FAPE.*

(iv) *Functional Behavior Analysis (“FBA”).* Both the School District Psychologist and the School District Social Worker noted in their evaluation reports that the Student was exhibiting off-task and “defiant” behaviors that were interfering with his education. (School District ##21, 22). Yet neither of these School District evaluators made any mention of the Student needing an FBA, when this Hearing Officer concludes that one was needed.<sup>63</sup> *Therefore the failure of the School District to conduct a FBA in 2015 or any other year constituted a denial of FAPE.*

### **Finding: For the Parents**

#### **c. *Independent Educational Assessments (“IEEs”).***

The *IDEA* “affords the parent the right to a publically funded IEE if the parent disagrees with an evaluation obtained by the public agency.”<sup>64</sup> School districts have the right to file a DPCN (as the School District did here) to show that its evaluations

---

<sup>62</sup> 20 U.S.C. §1401(1)

<sup>63</sup> A behavior management plan, based upon a functional behavior assessment should be considered when developing an IEP of a student (such as the Student in this case) whose behavior interferes with his learning. 20 U.S.C. §1414(d)(3)(B)(i).

<sup>64</sup> 34 C.F.R. §300.502(b)(2)(ii).

are appropriate.<sup>65</sup> Evaluations performed by school districts will be upheld as appropriate when they comply with State and federal law, are completed within the required time period and are based on the necessary variety of diagnostic tools appropriately given by trained and knowledgeable professionals.<sup>66</sup> Evaluations must be selected and administered so as not to be discriminatory on a racial or cultural basis; they must be administered in the language most likely to yield accurate information on what the child knows academically, developmentally and functionally (unless not feasible to do so); they must be used for the purposes of which the assessments or measures are valid and reliable; they must be administered according to the instructions for the particular evaluation; they must assess the child in all areas of suspected disability; and they must use assessment tools that directly assists the child's IEP team in educational planning.<sup>67</sup> Therefore, in order to assess whether the School District was legally obligated to provide an IEE for its evaluations, each challenged evaluation given must be discussed.

- (i) School District's Psychological Evaluation (2015): [REDACTED] testified that [REDACTED] made several technical errors in administering her evaluations. ([REDACTED] Testimony): (1) there were several scoring errors on the VABS-II; (2) [REDACTED] should have not have administered the motor skills domain (and subdomains) for the VABS-II as it does not have normative data for ages 7 – 49; (3) [REDACTED] incorrectly awarded the Student a point for an “don't know” response, which

---

<sup>65</sup> 34 C.F.R. §300.502.

<sup>66</sup> 20 U.S.C. §1414(a)(2); 34 C.F.R. §§300.303-305. *M.Z. v Bethlehem Area School District*, 60 IDELR 273 (3<sup>rd</sup> Cir. 2013).

<sup>67</sup> 20 U.S.C. §1414(3)(A)-(C).

changes the Standard Score for the Verbal Comprehension Subtest; (4) the raw score on the Social Communication subscale for the GARS-3 is miscalculated; and, (5), there are scoring inconsistencies for the CARS-2. (█████ Testimony, Parent's #83). █████ also expressed concern that █████ should have given a more basic writing assessment once she learned that she could not give the Student the Essay Composition subtest of the WIAT-III. (Id) █████ was also very concerned that an eligibility designation of autism was not identified by █████ in 2015 despite preliminary data to show that he had autism. (█████ Testimony). █████ indicated that if there was a professional concern regarding the validity of the autism diagnosis, then further evaluation (using the ADOS-II) should have been completed to rule the disability in or out. (█████ Testimony). The Hearing Officer is persuaded by █████'s expert testimony and finds her credible as an expert witness. The Hearing Officer cannot ignore that the GARS and the CARS clearly indicated that the Student was autistic, and that █████ dismissed those findings due to the Student's history without recommending further evaluation. Additionally, █████'s achievement testing indicated that the Student had very poor academic skills compared to his peers, in addition to poor language skills. Yet, █████ did not recommend (or administer) evaluating the Student on his decoding and encoding skills. (█████ Testimony) Considering that that the School District uses the WADE to measure student's encoding and decoding skills, the lack of further evaluation in this area would have been appropriate. (█████ Testimony). If █████ had either administered the WADE herself (or recommended that another School District staff member administer it), then the Student's IEP Team would have had this vital information in planning the

Student's reading goals. Finally, ██████ gave the Student evaluations of the Student's emotional and behavior functioning, that along with her observations and teacher interviews clearly indicated that the Student was exhibiting behaviors that were interfering with his education. (School District #21, 22) Yet ██████ did not make any referral or recommendation for a Functional Behavior Assessment. (Id) Such a recommendation would have been necessary and would have directed the IEP Team to add this necessary component to the Student's IEP. (See, ██████'s Testimony, Parent's #82, with an informal FBA included). Therefore, for all of the above reasons, *this Hearing Officer finds that the Student was entitled to an IEE based upon ██████ 2015 evaluation.* The Parents are entitled to reimbursement for ██████'s, ██████'s and ██████'s evaluations, respectively.<sup>68</sup>

(ii) School District's Speech/Language Evaluation (2015): The Parent's private evaluator noted that there were several scoring errors in ██████'s protocols: most notably that there was no basal score on the CASL, and that was not noted in the report, thus invalidating the standard score. (Parent's #88, ██████ Testimony) However, ██████ testified that the information was nevertheless useful. (██████ Testimony). ██████'s evaluation report did not recommend that the Student have an AT evaluation, even though ██████ personally made one for the Student. (Parents #18) The while the Hearing Officer has found that failure by the School District to conduct the AT evaluation was a denial of FAPE, ██████'s failure to

---

<sup>68</sup> The Parents are not entitled to reimbursement for either ██████ or ██████ evaluations, as the Parents are only entitled to reimbursement for a single evaluation. 34 C.F.R. §300.502(b)(3).

actually make the recommendation in her evaluation report is mitigated by her actual referral for an AT evaluation. ██████ reported in her evaluation that the Student has difficulty verbally responding to questions, conversations and asking for help; that he could not understand questions that are being asked of him; and that he needed redirection. (██████ Testimony, P #87) Nevertheless ██████ did not recommend in her that the Student be evaluated for CAPD, despite these common indicators. (██████ Testimony). Again, it is necessary for the School District to evaluate the Student in all suspected areas of disability: once ██████'s evaluation opened the door to a possible CAPD diagnosis, she should have recommended further evaluation. *Therefore, this Hearing Officer concludes that the Parents were entitled to an IEE at public expense due to the scoring errors of ██████'s evaluation report and the reports failure to recommend that the Student be further evaluated for CAPD.* The Hearing Officer finds that the Parents are entitled to reimbursement for both ██████'s and ██████'s evaluations, respectively.

*(iii) School District's Occupational Therapy Evaluation Report (2015).* ██████, the Parent's private OT evaluator testified that in her expert opinion ██████ should have given additional subparts of the VMI. (██████ Testimony). She felt that ██████ did not get enough specific information on the Student to better address his needs, given the Student's complex history and presentation. (Id). However, she did testify that ██████'s choice not to give all of the subtests of the Beery VMI did not invalidate the test results. (Id). She also took issue with the Sensory Profile administered by the School District's OT as it did not produce quadrant scores. (Id). ██████ also criticized ██████ for failing to perform a task analysis, and not

resolving inconsistencies in the scoring by doing an assessment of the Student's bilateral skills. (Id). This Hearing Officer finds ██████ to be a credible expert witness in the area of OT and agrees that the Student needed to have sufficient testing as not to leave any uncertainties as to his sensory and OT needs. This Hearing Officer agrees that it was appropriate to have the Student's sensory needs assessed, especially given his well-documented habit of engaging in sensory seeking behaviors. Yet, ██████ did not directly assess the Student's sensory needs directly, but only by having the Student's classroom teacher fill out a sensory profile. The Student's sensory-seeking behaviors required a more direct assessment so that the IEP could consider appropriate intervention.

*Therefore, this Hearing Officer finds that the Parents are entitled to an IEE at public expense for the School District's 2015 OT evaluation report, and should be reimbursed for the cost of ██████'s report.*

*(iv) School District's Social Worker Report (2015). The Parent's private social work evaluator, ██████'s evaluation report was very thorough; and ██████ was certified as an expert in Social Work. (Parent's #82, ██████ Testimony) ██████ gave assessments in her evaluation, whereas the School District's social worker, ██████ did not. (Id) However, the School Psychologist, ██████ did give evaluations that address the Student's emotional functioning; and ██████ did not provide any testimony that those tests were inappropriate or scored incorrectly. ██████ did provide a FBA in her evaluation report, and neither ██████ nor ██████ failed to even mention the need for one. The Hearing Officer has already concluded that ██████'s failure to recommend an FBA was already a denial of FAPE and a fatal flaw to her evaluation, as she was the evaluator giving the assessments for*

social/emotional functioning. *The Hearing Officer concludes that [REDACTED]'s report was appropriate, as she was not the evaluator assigned with administering an assessment of the Student's social/emotional functioning; and, that her failure to recommend and FBA in her report does not require an IEE at public expense.*

**Finding: For the Parents in Part and for the School District in Part.**

**Issue #2: *Whether for the period of time from January 23, 2015 to the Present ("Statutory Period"), the School District created and implemented appropriate IEPs for the Student to address his documented academic and social-emotional/behavioral needs, as well as to develop an appropriate transition plan?***

**And**

**Issue #3: *Whether, the School District appropriately created and/or implemented the Student's IEPs dated March 13, 2015 and March 23, 2016 respectively (in all areas); and, whether these IEPs were based upon appropriate evaluation data? Whether, for the Statutory Period the Student's IEPs contained an appropriate placement for the Student; and whether these IEPs were appropriately implemented regarding related services?***

These two issues will be considered jointly in the legal analysis as they are closely related.

The Individualized Education Program ("IEP) is a written document created in a collaborative meeting between the parents of a student with a disability and school-based members of the educational team.<sup>69</sup> IEPs outline an eligible student's special education, related services and accommodations and must include essential components.<sup>70</sup> Central to the IEP is that it must provide for a FAPE in the least

---

<sup>69</sup> 20 U.S.C. §1414(d)(1)(A)(i). 34 C.F.R. §300.320(a).

<sup>70</sup> Id.

restrictive environment.<sup>71</sup> FAPE is defined as special education and related services that: (1) are provided at public expense; (2) meet the standards of the State; (3) include preschool, elementary school or secondary school; and (4) are provided in conformity with the IEP.<sup>72</sup>

While there is no firm definition of “appropriateness” in the *IDEA*, the United States Supreme Court (“Supreme Court”) has ruled that an IEP is appropriate when it provides personalized instruction with sufficient support services to permit a student with a disability to benefit educationally from the instruction.<sup>73</sup> In order to be appropriate, every IEP must (1) be formulated in accordance with the procedural requirements of the *IDEA*, and (2) must be “reasonably calculated” to enable the child to obtain an educational benefit.<sup>74</sup> Most recently the Supreme Court has rejected that an IEP is appropriate if allows mere “*de minimus* progress.”<sup>75</sup> Especially for children in self-contained special education programs, the IEP must be “appropriately ambitious” and provide “challenging objectives” in light of the student’s unique circumstances.<sup>76</sup> School Districts must be able to offer “cogent and responsive” explanations for their

---

<sup>71</sup> *Endrew F. v Douglas County Sch. Dist.*, 137 S. Ct. 988, 69 IDELR 174 (2017). *See also, Bd. of Educ. of Hendrick Hudson Central Sch. Dist. V Rowley*, 458 U.S. 176, 553 IDELR 656 (1982).

<sup>72</sup> 34 C.F.R. §300.17.

<sup>73</sup> *Rowley*, 458 U.S. 176 (1982).

<sup>74</sup> *Id.*

<sup>75</sup> *Endrew*, 137 S.Ct. 988 (2017).

<sup>76</sup> *Id.*

decisions that show an IEP is reasonably calculated to enable a student to make progress appropriate in light of his or her circumstances.<sup>77</sup>

The Student alleges that the IEPs for the Statutory Period do not provide FAPE in many ways. This Hearing Officer will address them separately.

**a. *Are the relevant IEPs based upon accurate evaluation data?***

This Hearing Office has already found that the School District denied the Student a FAPE by failing to evaluate the Student appropriately in the areas of Autism, CAPD, reading, an FBA and AT. Any one of these violations (let alone all of them) dramatically affect the manner in which the IEP Team should have appropriately planned for the Student's academic, functional and behavioral needs. Because the Hearing Officer has already found that these necessary evaluations and the data they would have provided were necessary for a FAPE<sup>78</sup>, then *this Hearing Officer concludes that for the Statutory Period, the Student's IEPs do not deliver FAPE because they do not address all areas of need.*

**Ruling: for the Parent.**

**b. *Do the relevant IEPs address the Student's academic needs?***

---

<sup>77</sup> *Id. Endrew* does not create a new standard for *IDEA*, but rather clarifies the existing *Rowley* standard. As such, it does not change the interpretation of the *IDEA*, but aides in this Hearing Officers analysis of whether the Student's IEP was designed to provide FAPE. This Hearing Officer concludes that even though *Endrew* came down after the IEPs at issue were drafted, and after the DPCN is filed, there will be no error in citing to it in this case.

<sup>78</sup> The *School Code of Illinois* ("School Code"), 105 ILCS 5/14/8.02(b), requires that in the development of an IEP for a student with an autism spectrum disability, the student's IEP Team is required to consider all of the following factors: (1) the verbal and nonverbal communication needs of the child; (2) the need to develop social interaction skills and proficiencies; (3) the needs resulting from the child's unusual responses to sensory experiences; (4) the needs resulting from resistance to environmental change or change in daily routines; (5) the needs resulting from engagement in repetitive activities and stereotyped movements; (6) the need for any positive behavioral interventions, strategies and supports to address any behavioral difficulties resulting from autism spectrum disorder; and other needs resulting from the child's disability that impact progress in the general education curriculum. As will be discussed more completely below, the Student's IEPs during the Statutory Period fail to appropriately address most of these.

Each IEP must include measurable annual goals (both academic and functional) to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability.<sup>79</sup> Annual goals are statements that describe what a student with a disability can reasonably be expected to accomplish within a 12-month period in a special education program.<sup>80</sup> Annual goals and benchmarks must be objectively measureable, and specific enough to allow the parent and the school district to monitor progress during the school year.<sup>81</sup> Vague and immeasurable goals can deny a child FAPE.<sup>82</sup>

The Student's disabilities required him to receive a multi-sensory reading program (with an emphasis on decoding) for the Statutory Period and going forward. (School District #5, 13, Parent's #55, 69, 77, 82-84, ██████ Testimony, ██████ Testimony, ██████ Testimony, ██████ Testimony, ██████ Testimony and ██████ Testimony) The Student's reading goals were based upon the FP Program, not a multisensory program. The Student has significant difficulties with decoding, encoding, fluency and comprehension. (Id) Yet his reading goals for 2015 and 2016 do not address comprehension or phonetic awareness; they only address fluency by having the Student read aloud at his instructional level. This fundamental failure to properly identify a proper multisensory program (despite the fact that a Wilson program was readily

---

<sup>79</sup> 34 C.F.R. §300.320(2).

<sup>80</sup> *Letter to Butler*, 213 IDELR 118 (OSERS 1988).

<sup>81</sup> *See, A.M. v New York City Dept. of Educ.*, 964 F. Supp. 2d 270 (S.D.N.Y. 2013)

<sup>82</sup> *Escambia County Bd. of Educ. v Benton*, 406 F. Supp. 2d 1248 (S.D. Ala. 2005).

available at the School District) and failing to write goals that addressed the all of the Student's reading needs constitutes a denial of FAPE.

The Hearing Officer finds that the Student's writing goal during his 2015 IEP (School District #5) and his Social Studies goal in his 2016 IEP do not connect logically to the evaluation data demonstrating that the Student could not write more than a few words at a time. (School District #22); and that for a student with his documented needs, his writing goal and support minutes were inappropriately removed in 2016. There was no evidence that the Student was accessing appropriate AT in order to assist him in academic tasks, or in any way to achieve his IEP academic goals. (██████████ Testimony)

In addition, for the entirety of the Statutory Period, the Student has needed Extended School Year (ESY), but has never received it. The School District's own witnesses and documentation demonstrate that the Student should have had an ESY program with a multisensory academic program, social goals and related services in social work, speech therapy and OT for 2015 through the summer of 2017. *For this reason, the Hearing Officer concludes that the Student's IEPs during the Statutory Period do not address his documented needs in reading and written expression in a manner designed to provide him a FAPE, nor did they provide an appropriate ESY Program.*

**Ruling: For the Parents**

**c. *Do the relevant IEPs address the Student's social/behavioral needs?***

None of the Student's 2015 and 2016 IEPs contain either an FBA or a Behavior Intervention Plan (BIP) to address the Student's behavior issues. They do not contain

any direct social work services, or social work goals which the Student, with his social deficits needs. Even if the School District had failed to give him the eligibility designation of autism but had made adequate plans in his IEP to address the criteria of 105 ILCS 5/14/8.02(b) (footnote 76 above), this Hearing Officer could conclude that his IEP was appropriate for someone on the autism spectrum. But the utter lack of an FBA and a BIP for the entire statutory period is not appropriate for this Student and his identified behavioral and social needs. *This Hearing Officer finds that the School District denied the Student a FAPE when it failed to include an FBA and a BIP, as well as direct social work minutes and social work goals into his IEPs, beginning in 2015 and continuing to the present.*

**Ruling: For the Parents**

***d. Do the relevant IEPs make an appropriate placement determination?***

At present, the School District is not challenging the Student's placement at ██████████ despite the fact that it hasn't formalized the placement in an IEP nor has it made an attempt to fund the Student's ongoing tuition (or reimburse the Parents for their costs to cover tuition for the end of the 2016-2017 school year). (██████████ Testimony, Mother's Testimony, ██████████ Testimony). This Hearing Officer acknowledges and agrees with both parties, as well as the Parents' evaluators, that ██████████ is an appropriate placement for the Student for the 2017-2018 school year (inclusive of summers). This Hearing Officer agrees.

The Parent is also alleging that the Student should have been in a placement like ██████████ from 2015 to the spring of 2017 when he enrolled and began attending school there. This Hearing Officer agrees. The Student, while enjoying his time at

██████████, is in need of a focused self-contained school such as ██████████, with a multisensory academic curriculum in order to access his education. The School District evaluations and IEPs describe the Student a multisensory learner who is not able to keep up with what is expected of him, despite the availability of a 1:1 paraprofessional. (School District ##5, 13, ██████████ Testimony) *The Hearing Officer finds that ██████████ ██████████ School did not provide a FAPE to the Student, and that the Student needs to be in a self-contained therapeutic day school, such as ██████████ in order to access his curriculum.*

**Finding: for the Parents**

***e. Were the relevant IEPs implemented appropriately in the area of related services?***

In the 2015 and 2016 IEPs the Student received direct minutes for related services in Occupational Therapy and Speech Therapy. (School District ##5, 13) At hearing the Parent presented evidence that those services may not have been provided as written. The Student missed eleven OT sessions from May 2015 through March 2016, which do not appear to have been made up. (Parent's #77) *This Hearing Officer finds that, especially in light of this Student's ongoing sensory issues, the loss of the OT sessions constitutes a denial of FAPE.*

In addition, several of the Student's direct services in Speech were provided by Interns, supervised by ██████████ (to make sure they understood the sessions and were familiar with the Student) were allowed to work alone with the Student. (██████████ Testimony) The service logs show that 41 of the 77 total therapy sessions (53%) were either co-run with an intern, or run with the intern working alone with the Student. (Parent's #32). The Parents report that no one told them that Interns would be

delivering speech therapy to the Student. (Father's Testimony). There was no evidence that the Interns inappropriately provided speech therapy to the Student.<sup>83</sup> Given that the Parent's expert witnesses (██████ and ██████) described practices in which supervised graduate students are used to either give assessments or deliver services, *this Hearing Officer finds that it was not inappropriate, per se, for ██████ to use Interns when delivering speech therapy to the Student, absent any further evidence that the Interns did not provide the appropriate therapy, and ██████'s use of supervised interns did not deny the Student a FAPE.*

**Ruling: For the Parents in Part and For the School District in Part**

***f. Do the relevant IEPs contain an appropriate transition plan?***

The *IDEA* requires every IEP of a child over the age of 16 to have a transition plan.<sup>84</sup> In Illinois, a transition program must be in effect by the time a child turns 14 1/2 years old.<sup>85</sup> The term 'transition services' means a coordinated set of activities for a child with a disability that is designed to be a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including

---

<sup>83</sup> Although the Parents submitted a bill for their private speech therapy with ██████, this Hearing Officer does not find that the School District is obligated to pay for private speech therapy provided by the Parents.

<sup>84</sup> 34 C.F.R. §300.320(b).

<sup>85</sup> 105 ILCS 5/14-8.03(a-5)

supported employment), continuing and adult education, adult services, independent living, or community participation; is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and, includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.<sup>86</sup>

The Student's March 2016 IEP (School District #13) has three transition goals as part of this IEP, however he has not had any transition assessments, there are no planned courses of study filled out, and the goals involve the Student "beginning to investigate" various programs or areas of interest, with no real ability to measure the goals. (Id). There is no baseline data on the Student's interests or whether the Student has a realistic understanding of his abilities. (Id). In short, the transition plan only seems to consist of goals; but, does not lay out a forward looking plan to prepare the Student for post-secondary life. *The Hearing Officer finds that the School District denied the Student a FAPE by failing to provide him with a complete, and appropriate transition plan.*

#### **Ruling: For the Parents**

***Issue #4: During the Statutory Period, did the School District comply with the procedural requirements of the IDEA, specifically by appropriately and accurately informing the Parent of the Student's progress? If so, did the failure of the School District to follow the procedural requirements of the IDEA as set forth above either (a) deny the Student a free appropriate public education (FAPE), (b) significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or, (c) deny the Student an educational benefit?***

---

<sup>86</sup> 20 U.S.C. §1401(34)

The Parents submit that the School District violated the procedural requirements of the *IDEA*. Specifically the Parent alleges that the School District has failed to produce Student records pursuant to the *IDEA*; that the School District failed to convene IEPs to consider the Parents' outside evaluation reports; and that the School District failed to provide the Parents with required educational information. The School District submits that for all of the procedural violations listed above, either it denies that the events took place; or it contends that if the procedural violation did occur the Student was not denied a FAPE, the Parents were not denied a significant opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or the Student was not denied an educational benefit. The School District asks for a ruling in its favor and that the Hearing Officer deny all of the Student's/Parents' requested relief.

**a. Generally**

Regarding the allegations of a procedural violation of the *IDEA*, this Hearing Officer may find a violation of FAPE only if the alleged procedural inadequacies (a) impeded the Student's right to a FAPE, (b) significantly impeded the Parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or (c) caused the Student a deprivation of an educational benefit.<sup>87</sup> In short, this Hearing Officer would have to conclude that the procedural violations affected the Student's substantive rights under the *IDEA*.<sup>88</sup>

**b. Production of Legible and Complete Student's Records.**

---

<sup>87</sup> 34 C.F.R. §300.513(a)(2).

<sup>88</sup> *Lesene v District of Columbia*, 447 F.3d 828, 834.

Under the *IDEA*, the School District is required to permit parents and students the right to inspect and review any educational records relating the student that are collected, maintained, or used by the school district.<sup>89</sup> School districts are to comply with requests for records “without unnecessary delay” and “before any meeting regarding an IEP, or any hearing”.<sup>90</sup> This right extends to any representative of the parent or the student.<sup>91</sup> The Parent’s made a timely records request in January 2017, yet several witnesses testified as to emails and other Student records that were not produced at hearing, nor were produced as part of the 5-day prehearing disclosures and entered into evidence at hearing. (██████, ██████, ██████ Testimony, ██████ Testimonies.) For example, ██████. testified that she produced all of her evaluation protocols to the School District’s attorney, they were not produced to the Parent, nor part of the five (5) day disclosure by the School District. (██████ Testimony). The failure to produce these records, including the protocols is substantive considering an important issue in the instant case revolved around the appropriateness of the School District’s evaluations. *The Hearing Officer finds that the School District failed to make a timely production of documents to the Parents and their representatives, and that that failure constituted a denial of FAPE.*

**Ruling: For the Parents**

**c. Failure to convene an IEP meeting to consider private evaluation reports**

---

<sup>89</sup> 34 C.F.R. §300.613(a).

<sup>90</sup> Id.

<sup>91</sup> 34 C.F.R. §300.613(a), (b)(3).

At hearing, the witnesses and counsel all agreed that there has been no IEP since 2016 to consider the Student's final private evaluation reports, despite a legal obligation to do so.<sup>92</sup> The Parents provided the School District with copies of their private evaluation reports as they were completed, beginning in October 2016 (with [REDACTED] Report). (Parents #31, 33 and 34, School District #7, Mother's Testimony, [REDACTED] Testimony). [REDACTED], a School District administrator, testified that he told the Student's principal, [REDACTED] that they needed to schedule an IEP meeting to consider the outside evaluations. ([REDACTED] Testimony). Yet the School District did not put on any documentary or witness testimony to indicate that they were attempting to schedule an IEP meeting prior to the Student's annual review in March 2017.

There is evidence that the School District was attempting to schedule the March 2017 without success due to conflicting schedules, mostly on the part of the Parents and that the parties could not find a mutually agreeable date until August 2017. (School District ##8, 26, 29, Parent's ## 65, 69, Mother's Testimony, Father's Testimony, [REDACTED] Testimony, [REDACTED] Testimony, [REDACTED] Testimony. The August 2017 IEP meeting never took place due to the inability of the School District to obtain a school psychologist (Mother's Testimony) and was never rescheduled. To date, the Student's IEP team has never formally met to have an IEP meeting to consider the Student's private evaluations, or to formalize his placement at [REDACTED]. (Mother's Testimony) The Hearing Officer finds that from the time the School District began planning for the March 2017 IEP up to and including August 2017 that both parties contributed to the inability to find a mutually agreeable date. However, the School District was obligated to schedule an IEP prior to

---

<sup>92</sup> 34 C.F.R. §300.502(c)(1).

the March 2016 annual review to consider the outside evaluations it had received until then; and it was obligated to schedule an IEP meeting once the proposed August 23, 2017 IEP was cancelled.

*The Hearing Officer finds that the failure to have an IEP meeting after the completion of the private evaluations to consider those reports denied the Student a FAPE.*

**d. Failure to provide the Parent with Student information required under the IDEA in a manner that allowed the Parent to be able to meaningfully participate in educational planning for the Student?**

As stated above, both Parents testified that they saw IEP report cards and other IEP documents for the first time at hearing. (Mother's Testimony, Father's Testimony). For example, the Student's Mother testified that the only IEP Report Card she received was in November 2016, when at least three should have been issued for that year. (Mother's Testimony, Parent's #37.) There were no IEP Report Cards entered into evidence for the 2015-2016 school year by the School District, to counter the Mother's Testimony that she only received one IEP Report Card in 2016. Other IEP report cards were incomplete (Parent's #38). In addition, the Student's Father testified at hearing that he was unaware that Interns were providing the Student's speech therapy at school, and that if had been aware of that, he would have objected. (Father's Testimony). The Student's Father also testified that when he was informed at the March 29, 2016 IEP Meeting that his son was reading at the 3<sup>rd</sup>-4<sup>th</sup> grade level, it was profoundly moving to him that his son was not making progress. (Father's Testimony).

There was no claim by the Parents that they failed to receive timely copies of the Student's IEPs or that they were not given their rights. The overall testimony of the

Parents portrayed two people constantly seeking to gain information on their son's disabilities, and constantly exploring evaluative and educational options for him. The School District's IEPs themselves presented a clear picture on their face that the Student was dramatically behind his peers in almost every measureable sense. This Hearing Officer has already ruled that the use of Interns for the delivery of speech therapy at ██████ did not constitute a denial of FAPE, and the Parents set forth no legal authority that would have required the School District to inform them of the interns. To the extent the Student's IEPs clearly set forth the adverse effect the Student's disabilities had on his education; and, to the extent the School District was under no obligation to inform the Parent's that supervised Interns were helping to deliver services to the Student, this Hearing Officer finds that the School District did not fail to inform the Parents of the Student's overall performance or delivery of speech therapy services.

However, the IDEA requires that each IEP requires how "periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided."<sup>93</sup> The Student's IEPs required quarterly reporting (School District #5, 13), and the School District did not provide any evidence to counter the Parents' testimonies that they did not receive all of the IEP quarterly reports. There is credible evidence that when the Parents have become aware of the serious of their son's needs, they are very proactive. This Hearing Officer concludes that had the Parents received all of their quarterly reports as required, they would have been even more involved in actively participating in their son's determination of FAPE; and that without these

---

<sup>93</sup> 34 C.F.R. §300.320(a)(3)(ii).

quarterly reports they were denied an opportunity to participate in the decision-making process for the Student. *This Hearing Officer finds that the School District failed to provide the Parents with quarterly reports as required by the IDEA, and that this failure deprived the Parents of an opportunity to participate in the decision-making process regarding the provision of FAPE to the Student.*

**Finding: For the Parents.**

**Compensatory Education**

Hearing Officers have the authority to award compensatory education if necessary to cure a prior denial of FAPE.<sup>94</sup> Compensatory education “should aim to place disabled children in the same position they would have occupied but for the school district’s violations of the *IDEA*.”<sup>95</sup>

This Hearing Officer has found that the Student was denied a FAPE when, during the Statutory Period, the School District:

1. Failed to evaluate the Student in all suspected areas of disability;
2. Failed to create appropriate IEPs designed to meet his unique educational needs in the areas of academics, social/behavioral impairment, transition planning and placement;
3. Failed to implement the Student’s Occupational Therapy as outlined in his IEPs; and
4. Failed to follow the procedural requirements of the *IDEA*, by not making a timely production of records to the Parents, by not convening an IEP to

---

<sup>94</sup> *Bd. of Ed. Of Oak Park & River Forest High School Dist. 200 v Todd*, 79 F.3d. 654 (7<sup>th</sup> Cir. 1996); *Evanston Cmty. Sch. Dist. No. 65 v Michael M.*, 356 F.3d 798 (7<sup>th</sup> Cir. 2004).

<sup>95</sup> *Petrina W. v City of Chicago Public School District*, 2009 WL 5066651 at \*3 (N.D. Ill. Dec. 10, 2009).

consider the Parents' outside evaluations and to change the Student's placement to [REDACTED]; and, by failing to send the Parents quarterly IEP Progress Reports.

The School District has not addressed the Student's needs for a multi-sensory program to address his deficits in decoding, his deficits in writing, his deficits due to his CAPD, his deficits due to his autism, his need for AT, OT and social work, or his behaviors at school.

The Parents requests the following compensatory education:

- Compensatory services as recommended by the third-party evaluators;
- 1:1 tutoring services beyond the school day by a certified special education teacher for 60 minute sessions twice a week for the period the Student was denied FAPE;
- 1:1 speech/language services by a certified speech language pathologist beyond the school day for 60 mpw for the period the Student was denied FAPE;
- 1:1 OT services by a certified occupational therapist beyond the school day for the period the Student was denied FAPE;
- Integrated assistive technology to allow the Student to benefit from the aforementioned compensatory education;
- FastForward for 50 hours (scheduled one hour weekly with FastForward personnel);
- Transportation costs to and from the aforementioned interventions;

- Additional assistive technology to assist the Student at home, in addition to a home computer and iPad.

The Hearing Officer agrees that the Student requires intensive remedial multi-sensory reading, math and written language instruction; and that he requires social work services, occupational therapy and speech language services, assistive technology. *See*, discussion above.

In calculating the amount of compensatory education to award the Student, this Hearing Officer relies upon the Parent's experts, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. This Hearing Officer concludes that had the Student received multi-sensory instruction, CAPD interventions and autism interventions since 2015, many of his current challenges would have been remediated, and he would be further towards obtaining age-appropriate academic, functional and behavioral skills. These same witnesses gave credible testimony that the Student can still make noticeable improvement in his academic, functional and behavioral skills if intensive multi-sensory academic intervention, as well as supports for the Student's CAPD and autism are awarded in addition to any other award by this Hearing Officer.

Based upon the evidence entered at hearing this Hearing Officer finds that the level of compensatory education set forth below will serve to place the Student in the place he would have been had he not been denied FAPE (as indicated in the above ruling).

Accordingly, this Hearing Officer chooses to accept the recommendations of [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] and award compensatory damages in the following amounts and durations (including door-to-door transportation) to be delivered to the Student in addition to the services he receives during the school day:

- speech/language services for 60 minutes per week (“mpw”) by a licensed clinical or school speech therapist for 50 sessions to address the Student’s language deficits;
- occupational therapy for 1-2 hours/week for 156 weeks (including summers) by a licensed or school occupational therapist to address his fine motor and sensory needs;
- training in the use of FastForward (to be used independently) in the amount of 1 hour/week for 50 weeks;
- CAPD remediation therapy for 60 mpw for 30 weeks (to address the Student’s CAPD issues) with either a certified audiologist or a certified speech/language therapist with experience in providing aural therapy;
- counseling services with a licensed clinical social worker or school social worker to address his anxiety and to work on social skills issues for twenty-five (25) sessions of one hour each; and,
- Wilson tutoring to be provided at the rate of 1-2 hours/week (and more in the summer, if feasible) for two years by a certified Wilson reading specialist.
- The School District is ordered to create a log of the individual services provided in the amounts set forth above. If the Student is unable to attend any session due to illness, the School District will make up any missed sessions until all are completed. If the Student is not available to attend a session for any other reason, the School District will not need to make up any sessions missed by the Student for reasons other than illness (e.g., family vacation, etc.) so long as it has written documentation of the Student’s absence and reason.

**Order**

Based upon the above Findings of Fact and Conclusions of Law, **and in addition to the compensatory education set forth above,**

1. The School District is to reimburse the Parents or the provider for the cost of ██████’s, ██████’s, ██████’s, ██████’s, ██████’s and ██████’s private evaluations and reports (contingent upon proof of payment by the Parents or proof that the amount of the evaluation is owing to the individual provider, and within 45 days of receipt thereof).

2. The School District is to reimburse the Parents for tuition monies paid to ██████████ ██████████ for the 2016-2017 school year (inclusive of education costs) in the amount of \$4867.40 within 45 days of receipt of payment by Parents.
3. The parties are to convene an IEP Meeting no later than twenty (20) school days after the date of this ruling to consider ██████████'s, ██████████'s, ██████████'s, ██████████'s, ██████████'s and ██████████'s evaluation report, and to make the following changes to the Student's IEP:
  - a. The Student's is to be placed at public expense at ██████████ until the end of the 2017-2018 school year, inclusive of the summer of 2018;
  - b. The disabilities of autism and CAPD will be added to the IEP as disability designations for the Student;
  - c. The Draft IEP document (Parent's #67) is to serve as a template of the Student's IEP with the amounts of services, accommodations and goal statements contained therein as minimum services to the Student for the 2017-2018 school year. In addition the Student's IEP will require a FBA and a BIP to be completed by the necessary members of the IEP team, and to include AT services, and an updated transition program. ██████████, ██████████, ██████████, ██████████, ██████████ and ██████████ are to be invited to this IEP and reimbursed for their time to attend the IEP. The IEP is not to be delayed in order to accommodate the schedule of ██████████, ██████████, ██████████, ██████████, ██████████ or ██████████.
  - d. The Student's IEP is to provide an explanation of the compensatory education services to be provided pursuant to this Final Determination and Order, and to set for a specific schedule for the provision of the compensatory education services enumerated above;
  - e. Any additional recommendations the IEP team wishes to make in accordance with this Final Determination and Order.

In accordance with 105 ILCS 5/14-8.02a(h), within 90 school days of receipt of this Order, the school district must submit proof of compliance to:

Illinois State Board of Education  
Program Compliance Division  
100 North First Street

Springfield, IL 62777-0001

**NOTICE OF RIGHT TO REQUEST CLARIFICATION**

Pursuant to 105 ILSC 5/14-8.02a(h), either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification 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.

IT IS SO ORDERED.

Dated: November 13, 2017

Jennifer A. Leisner  
Impartial Due Process Hearing Officer



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

---

█, a minor, by and through  
his Parent(s),

Petitioners,

- against -

Case No. 2016-0241

Jennifer A. Leisner                      Hearing Officer

Respondent.

---

**CERTIFICATE OF SERVICE**

I, JENNIFER A. LEISNER, certify that on November 13, 2017, copies of the Final Determination and Order were served upon the following persons in the manner indicated:

**Sent Electronically via Email Only**

Ms. Sara Mauk, Esq.

Ms. Koga Ndkium-Moffor, Esq.

Mauk & O'Conner

CPS Due Process and Mediation

1427 W. Howard Street

43 W. Washington Street, 2<sup>nd</sup> Floor

Chicago, Illinois 60626

Chicago, Illinois 60602

[semauk@earthlink.net](mailto:semauk@earthlink.net)

[kndkium-mof@cps.edu](mailto:kndkium-mof@cps.edu)

**Sent Electronically via Email Only**

Andrew Eulass, ISBE Due Process Coordinator

[AEULASS@isbe.net](mailto:AEULASS@isbe.net)

Wanda Schoneweis

[wschonew@isbe.net](mailto:wschonew@isbe.net)

**Dated: November 13, 2017**

/s/ Jennifer A. Leisner

Jennifer A. Leisner

Impartial Due Process Hearing Officer

100 Illinois Street, Suite 200

St. Charles, IL 60174