

The IHO issued an initial status call letter, preliminary order, and hearing process guideline on February 5, 2017. The District, through its attorney [REDACTED] ("[REDACTED]"), submitted a response on February 4, 2017. A resolution meeting was held on February 10, 2017 and was reconvened on February 13, 2017. No agreement resulted. The Prehearing conference ("PHC") was completed on May 21, 2017 and the Prehearing Conference Order was issued.

Prior to the hearing, the IHO was provided with copies of the proposed exhibits, proposed document lists, and proposed witness lists. The parties did not enter into a joint stipulation of facts.

The hearing took place on June 2, 5, 6 and 7, 2017, at [REDACTED] Center ([REDACTED]). Closing arguments were held at the District office, [REDACTED], [REDACTED], Illinois, on June 14, 2017 by agreement of the parties. An official court reporter was provided by the District for all hearing dates. The hearing was closed to the public.

At the conclusion of the presentation of evidence, documents offered into evidence by either Party, which were not objected to or which were admitted over objection, were admitted into evidence. IHO admitted the following exhibits:¹ P1; P2; P3; P4; P5; P9; P10; P11; P-12; P13; P14; P15; P16; P17; P-26; P-27; P-28; P-29; P-30; P-31; P-32; P-33; P-35; R-8; R-15; R-18; R-19; R-20 (pages 50-83); R-21; R-23 (same as P-12). Joint exhibits JE 1 - 19 were admitted. Proposed exhibits submitted at the five-day disclosure deadline but not expressly enumerated above were not admitted into evidence and were not considered in the preparation of this Final Determination and Order.

The Parents called five witnesses, in addition to providing direct examination of some of District's witnesses: 1. [REDACTED] ("Parent" or "[REDACTED]"); 2. [REDACTED] ("Parent" or

¹ Each exhibit is identified by "P" for Parents, "R" for District, and "JE" for joint exhibits and includes the exhibit number and specific page in the exhibit.

"██████████") 3. ██████████, M.S., CCC-SLP ("██████████"), Speech-Language Pathologist; 4. Dr. ██████████
██████████ PsyD ("██████████"), Parent expert and psychologist; 5. Dr. ██████████, Psy.D. ("██████████"), Parent
expert and psychologist. The District called twelve witnesses: 1. ██████████
("██████████"), ██████████ administrator; 2. ██████████ ("██████████"), ██████████ Social Worker; 3.
██████████ ("██████████"), ██████████ Social Worker; 4. ██████████ ("██████████"), ██████████ Special
Education Teacher; 5. ██████████ ("██████████"), ██████████ classroom aide; 6. ██████████
("██████████"), ██████████ Occupational Therapist; 7. ██████████ ("██████████"), ██████████
██████████ Manager; 8. ██████████ ("██████████"), ██████████ School
Psychologist, 9. ██████████ ("██████████"), Special Education Teacher at ██████████ School; 10. ██████████
██████████ ("██████████"), ██████████ Speech/Language Pathologist; 11. ██████████ ("██████████"),
██████████ Principal 12. ██████████ ("██████████"), ██████████ District Representative. Witnesses
were presented collaboratively and some witnesses were presented by both District and Parent.
After the completion of both parties' testimony, admission of evidence, and closing arguments,
the hearing was concluded.

No written transcript has been provided and this decision is based on the IHO's personal notes and recollection. In rendering this decision, the IHO has considered all documents entered into evidence, testimony by the parties' witnesses, the parties' opening and closing arguments, the parties' suggested case law, as well as independent research. This decision is issued within ten (10) days after the hearing's conclusion, as required by Illinois law. ²

ISSUES AND REMEDIES REQUESTED

This IHO certified the following issues at the PHC for adjudication at the due process hearing. The Parents' complaint raises the following issues:

- I. Whether the District denied Student's right to a free appropriate public education from January 25, 2015 up to and through the close of hearing by:

² 105 ILCS 5/14-8.02a(g55)(5)

- A. Failing to develop measurable annual goals designed to meet Student's needs.

District raised the following defense: The district denies that it has denied Student a free appropriate education at any time during this timeframe. The District believes the services and supports provided to the Student have been appropriate. Should the matter go to hearing, the District will bring forth witnesses to testify that the Student received FAPE. The District asserts that it has at all times developed measurable annual goals designed to meet the Student's needs.

- B. Failing to provide Student with a 1:1 aide at [REDACTED]

District raises the following defense: The District denies that it has denied the Student a free appropriate education at any time during this timeframe. The District believes the services and supports provided to the Student have been appropriate. Should the matter go to hearing, the District will bring forth witnesses to testify that the Student received FAPE. The district asserts that the provision of a 1:1 aide was discussed by the IEP team and was rejected on the basis that the Student had previously shown overdependence on adults. The team concluded that the provision of a 1:1 aide would only serve to hamper the Student's progress.

- C. Placing Student in a setting without peers of similar functional or developmental levels.

District raises the following defense: The District denies that it has denied the Student a free appropriate education at any time during this timeframe. The District believes the services and supports provided to the Student have been appropriate. The district asserts that the physical school location was chosen by the parents as part of a previous due process settlement agreement. The District further asserts that the specific classroom in which the Student was placed was also chosen with the Parents' input.

- D. Failing to appropriately address Student's behavior when that behavior interfered with Student's ability to access educational programming.

District raises the following defense: District denies that it has denied Student a free appropriate education at any time during this timeframe. The District believes the services and supports provided to

the Student have been appropriate. The district asserts that it has at all times appropriately addressed the student's behavioral needs. Since the time of Student's enrollment at [REDACTED], the Student's IEPs have contained Behavior Intervention Plans specifically tailored to address Student's needs.

- II. Whether Student's September 13, 2016 IEP was inappropriate in that it failed to:
- A. Provide a 1:1 aide for the Student.
 - B. Include goals that were designed to meet Student's individual needs.
 - C. Appropriately address Student's behavior when the behavior interfered with Student's ability to access educational programming.

District raises the following defense: The District denies that the Student's September 13, 2016 IEP was inappropriate. The District asserts that it has always provided the Student with an educational program/placement designed to meet the Student's individual needs, including all related services, appropriate goals/objectives, accommodations/modifications, and an appropriate transition plan.

- III. Whether Student's January 9, 2017 IEP was inappropriate in that:
- A. The District refused to consider the location and programming of the Student's educational placement.
 - B. The District refused to consider both academic goals and functional skills goals.
 - C. The District failed to provide a 1:1 aide for Student.
 - D. The District failed to accurately report Student's present levels of academic achievement and performance pursuant to 34 C.F.R. §300.320(a)(1).
 - E. The District failed to include goals that address the functional and/or life skills needs that result from Student's disability pursuant to 34 C.F.R. §300.320(a)(2)(i).
 - F. In that it, including but not limited to the January 9, 2017 BIP, failed to appropriately address Student's behavior and/or other social/emotional needs

District raises the following defense: The District denies that the Student's January 9, 2017 IEP was inappropriate. Again, the District asserts that it has always provided the Student with an educational program/placement designed to meet the Student's individual needs including all related services, appropriate

goals/objectives, accommodations/modifications, and an appropriate transition plan.

- IV. Whether Student's continuing placement at [REDACTED] is inappropriate due to Student's failure to make expected progress on Student's IEP goals and/or Student's failure to receive academic or social benefits.

District raises the following defense: The District denies that Student's placement at [REDACTED] is inappropriate. Again, the District asserts that it has always provided Student with an educational program/placement designed to meet Student's individual needs, including all related services, appropriate goals/objectives, accommodations/modifications. The District further asserts, again, that this placement was chosen by the Parents as the result of a due process settlement agreement.

- V. Whether the District denied a free appropriate public education to Student by failing to consider fully the results of the Neuropsychological Evaluation completed by [REDACTED] Center

District raises the following defense: The District denies that it denied a free appropriate public education to Student by failing to consider fully the results of the Neuropsychological Evaluation completed by [REDACTED] Center. The District asserts that this report was referenced in the report generated by the [REDACTED] psychologist in preparation for the January 9, 2017, IEP meeting, and that the evaluation is noted within this IEP. Additionally, the District asserts that outside evaluations are just one factor that the IEP team considers when developing an IEP.

- VI. Whether from January 15, 2015 to date of hearing, the District denied Student a free appropriate public education by failing to meet each of her educational and functional needs resulting from her disability pursuant to 34 C.F.R. §300.320 (a)(4):

- A. Whether Student requires lessons presented in a highly-structured manner with consistent pre-teaching and repetition because of her impaired processing speed.
- B. Whether Student requires a 1:1 aide because of her decreased adaptive functioning and language skills.

- C. Whether Student requires adaptive skills training and IEP goals to address the need for adaptive skills training.
- D. Whether Student's therapeutic school placement should include peers of similar functional and/or developmental levels allowing Student the opportunity to form peer relationships.
- E. Whether Student requires life-skills training/instruction in activities of daily living integrated into her daily curriculum.

District raises the following defense: The District denies that it denied Student a FAPE by failing to meet each of Student's educational and functional needs resulting from Student's disability. Again, the District asserts that it has always provided Student with an educational program/placement designed to meet Student's individual needs including all related services, appropriate goals/objectives, accommodations/modifications.

- A. The District asserts that the Student has received lessons in a highly structured manner with pre-teaching and repetition during Student's time at [REDACTED].
- B. The District denies that the Student requires a 1:1 aide because of her decreased adaptive functioning and language skills.
- C. The District asserts that it has developed goals to assist the Student in developing adaptive life skills.
- D. The District asserts that the Student's IEP contains goals directed at providing Student with life-skills.

VII. Whether the District considered the Student's progress/lack thereof, (as measured by Student's benchmarks, progress monitoring data, evaluation data and other objective data), from January 25, 2015 up to and through the close of hearing pursuant to 34 C.F.R. §300.320(a)(2) therefore denying Student FAPE. Parents maintain Student had a lack of progress in the areas of:

- A. Receptive language.
- B. Nonverbal reasoning.
- C. Spatial visualization, pattern perception, matching, and construction.
- D. Nonverbal intelligence.

- E. Math (including computation skills).
- F. Letter and word recognition and spelling skills.
- G. English language arts.
- H. Behavior goals.
- I. Academic goals in reading, writing, math, science and social studies.

District raises the following defense: The District denies that the Student was denied a free appropriate public education when she allegedly failed to make progress during the 2016-2016 and 2016-2017 school years. The District believes the services and supports provided to the Student have been appropriate.

Parents seek the following remedies:

1. An order that the District's placement for the Student, for the remainder of the 2016-2017 school year be at a therapeutic day school that is appropriate for the Student's cognitive and social levels and addresses the Student's academic, functional, social and related service needs, such as [REDACTED] School with a one-to-one aide and transportation to and from school.
2. Placement with a one-to-one aide and transportation to and from school for the Student for the 2017-18 school year at a therapeutic day school that is appropriate for the Student's cognitive and social levels and addresses the Student's academic, functional, social, and related-service needs, such as [REDACTED] School.

BURDEN OF PROOF

Parents have the burden of proof on all issues raised in their Complaint, as specified above.

Further, the District has a statutory duty to provide evidence that it has appropriately identified Student's special education needs and proposed a program and related services to adequately and appropriately meet those needs.³

³ 105 ILCS 5/14-8.02a (g-55).

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of counsel, the IHO's Findings of Fact are as follows:

1. Student received early intervention services beginning at nine months of age. Initial eligibility for special education services occurred in December of 2008 under categories of developmental delay and visual impairment. In 2009, Student was enrolled in ██████████ Center. Student began kindergarten at ██████████ Elementary in 2011.⁴ ██████████ and ██████████ are ██████████ public general education schools that include special education services. ██████████ is a therapeutic day school.⁵ Student was placed at ██████████ pursuant to a settlement agreement between ██████████ and Parents in the fall of 2015.⁶ Student started at ██████████ in November 2015.⁷ The Parents are not requesting consideration of the least restrictive environment provisions of the IDEA.
2. Student is an eleven-year-old girl with a history of developmental delays, childhood apraxia of speech, dysarthria, and visual impairment. Genetics testing in January 2014 at the ██████████ Clinic in ██████████, ██████████ found a mutation of gene GATAD2B⁸ and resulted in a diagnosis of GATAD2B -associated neurodevelopmental disorder ("GAND").⁹ GAND is an inherited condition characterized by intellectual disability, limited speech development, poor muscle tone, thin hair, distinctive facial features, and long fingers.¹⁰

⁴ JE19-3.

⁵ ██████████ is a vendor to ██████████. Per the contract between ██████████ and ██████████, ██████████ is responsible to insure ██████████ implements a student's IEP and collects progress notes and follows all 401 rules that make them eligible to be a special education placement school.

⁶ ██████████ testimony stated that Parents were given three options, ██████████ and two cluster programs which the Parents found not appropriate. ██████████ testified that this was the only program where Parents felt Student would be safe. There was no evidence presented to support an allegation that ██████████ is not a safe school.

⁷ ██████████ testimony.

⁸ P17-1, ██████████ and ██████████ testimony.

⁹ P12-1

¹⁰ JE13-1

3. Student is described as an incredibly sweet child, curious, very hard working, and capable of learning under good circumstances.¹¹ [REDACTED] describes Student as very sweet, loving, emotional, excited, funny and smart. Uncontradicted evidence from all parties who testified indicates that Student is well liked, and those charged with her care work hard to assist Student in being successful. Student is primarily nonverbal, she has learned to form some words and can communicate with those words, gestures and American Sign Language (“ASL”). Student does have motor functioning, Student swims, skis, water skis and can ride a modified bicycle.¹² Student’s Parents are tireless advocates on Student’s behalf and have succeeded in helping Student reach what some might have described as unattainable goals.¹³
4. GAND affects Student’s ability to learn. Intellectually, Student needs lots of scaffolding; sustained and extended time; redirecting (Student cannot sustain attention on her own); lots of repetitions, multiple modalities; and cueing with American Sign Language (“ASL”).¹⁴ [REDACTED] testified it will take Student “a 1000 repetitions” to learn something that it would take an average child two to three repetitions to learn. Functionally, Student needs help with almost all life skills.¹⁵
5. [REDACTED], PsyD, [REDACTED] Center (“[REDACTED]”), was qualified as an expert and testified as a pediatric neuropsychologist in the field of genetic disorders. [REDACTED] testified credibly that what is unique about a very rare syndrome such as GAND is that there is no context to analyze the child against. There are only about 60 known cases of GAND in the world, 14 of those are in the United States.¹⁶

¹¹ [REDACTED] testimony.

¹² [REDACTED] testimony.

¹³ Video of Student reading, JE-36. Student rides a modified bicycle, P-1. Student water skis, [REDACTED] testimony.

¹⁴ [REDACTED] testimony.

¹⁵ [REDACTED] stated Student can use the bathroom and can take off some clothing.

¹⁶ [REDACTED] testimony.

6. In a [REDACTED] clinic report dated January 31, 2014¹⁷, [REDACTED] PHD, LP, Pediatric Neuropsychologist, reports the history of Student's illness, stating: "The family has noticed this year that [Student] is refusing to engage in school work more and more, perhaps due to its difficulty. There is also the idea that decreased social interactions at school may be making [Student's] day less pleasurable."¹⁸ Later in the report, it is noted that "compared to same-aged children, she needs copious more exposure with new information but unfortunately will have variable recall at a later point in time."¹⁹ The history states that [Student] underwent a Speech Pathology consultation with Ms. [REDACTED] ("[REDACTED]"). The OWLS-II was administered, which revealed extremely oral express and listening comprehension abilities. Roughly speaking, [Student] performed in the mid-to late 3-year-old age level."²⁰ The [REDACTED] clinic report also notes that "[Student] is empathic. She has roughly appropriate social skills. She does tend to invade others' personal spaces. As time passes she is becoming less interactive with peers. This may be a function of her struggles with language. The family is worried that this may manifest itself in emotional difficulties down the road."²¹ Later, the report indicates: "On a general questionnaire, the family notes concerns regarding social withdrawal, attention problems and unusual behaviors. [Student's] parents rate her overall day-to-day functioning in the extremely low range."²² Student had just turned eight years old. This report was provided to [REDACTED] and is part of the Student's educational record.

¹⁷ JE14-1. This report was admitted during the [REDACTED] testimony. No one from Mayo Clinic was present to testify.

¹⁸ P14-2.

¹⁹ P14-3.

²⁰ [REDACTED] is a speech language pathologist in [REDACTED]. [REDACTED] was not called to testify and her report was admitted during the [REDACTED] testimony. P15 and P14-3.

²¹ P14-3.

²² P14-5.

7. Parents were familiar with [REDACTED] because Student attended a weekend respite program at the facility.²³ Prior to Student's placement at [REDACTED], Parent's toured [REDACTED] and were disturbed by the behavioral disorders²⁴ they observed in the classrooms.²⁵ Initially, Student was scheduled for a classroom with younger students, which became unavailable due to Student's age.²⁶ [REDACTED] did not feel that requesting an exception would be appropriate because younger students would be more dysregulated.²⁷ After consultation with [REDACTED] and [REDACTED] Parents selected the [REDACTED] program,²⁸ which they found to be a more appropriate placement because it did not appear to include Students who might be violent.²⁹ [REDACTED] believed the [REDACTED] program was appropriate based upon staff, staff ability, Student's age, Student's academic needs and Parent's desire. At the time the placement was selected, Parents were aware that the [REDACTED] program consisted of Kosher Orthodox Jewish Males, no females, and included a Jewish Studies component in which Student would not participate.³⁰ Every other student in the [REDACTED] program was at a higher cognitive level than Student.
8. On November 23, 2015, shortly after Student entered [REDACTED], an IEP meeting for Student was held. During this meeting, general considerations in the development of the IEP were specified. Under Student strengths, the IEP noted Student was reading at the beginning first grade level. ³¹ Later in that same section, the IEP specifies:

²³ The respite program is not a part of the therapeutic day school and is a separate program.

²⁴ [REDACTED] and [REDACTED] testimony. P12-2.

²⁵ It is noted for the record that this Student has a BIP and a FBA attached to the IEP.

²⁶ [REDACTED] testimony. 23 Ill Adm. Code §226.720(b) which provides the age range of students within a special education grouping, states that the range shall not exceed four years at the elementary level. Student's date of birth is 12/19/2005.

²⁷ It was well documented that Student's behavior impeded her learning or that of others. JE7-12.

²⁸ This is a therapeutic program with a Jewish prayer and study component. The program is mainly composed of Orthodox Jewish males.

²⁹ [REDACTED] and [REDACTED] testimony.

³⁰ [REDACTED], [REDACTED], [REDACTED], [REDACTED] testimony.

³¹ JE 7-2, [REDACTED] testimony.

[Student] is reading significantly below grade level, at approximately the kindergarten/first grade level. She struggles to comprehend grade-level text. Her listening comprehension skills appear to be stronger than her independent reading comprehension skills. She continues to struggle with beginning blends. Rhyming words are difficult for her, and she becomes upset and frustrated when asked to work on this skill. She has difficulty identifying character traits about characters in stories that she has read. Successful strategies include visuals, graphic organizers, providing text at her instructional level, computer based programs, hands on material, small group or one-on-one instruction.³²

Under math in the same section of the IEP, it states, “[Student] is able to add and subtract single and double-digit numbers.”³³ On the next page, under academic needs, it states for math: [Student] continued to struggle with addition and subtraction facts, and should continue to work on building fluency.”³⁴ Under social it states: “[Student] has difficulty interacting with her peers appropriately. She often wants to play games that are developmentally younger than her chronological age, such as playing puppy or baby. She requires prompting to initiate and sustain peer interactions.”³⁵ Prior to this IEP, Student did have a dedicated 1:1 paraprofessional. In writing this IEP, the team determined that Student no longer required the 1:1 paraprofessional due to Student’s placement “in a small, highly-structured setting with low teacher to student ratio.”³⁶ Further, it was determined that Student does not require paraprofessional support to access the general curriculum or meet her social, behavioral or adaptive needs.³⁷ Evidence was presented that the IEP team

³² JE7-3.

³³ JE7-2, [REDACTED] testimony.

³⁴ JE7-3.

³⁵ JE7-8; JE19-4 notes: “Ms. [REDACTED] and Mr. [REDACTED] state that [Student’s] interactions with peers are obviously significantly affected by her speech problems. Her parents are pleased that she seems to be accepted by her peers, has friendships. They note that these relationships are still somewhat limited, and would love to explore ways to deepen the social interactions and friendships [Student] is able to have with her peers.”

³⁶ JE7-9.

³⁷ P7-12. This appears to be in direct contradiction to the IEP statement that Student requires paraprofessional support for all academic areas and adult support for all independent functioning tasks. This statement also appears on Exhibits: JE7-22,24,25,28,30,31,32. Independent functioning JE7-5. [Student] needs prompting and adult support for all independent functioning tasks within the classroom, task completion, communication, safety. Personal care and hygiene. Maximum prompts to hang up coat. When she does not want to complete academic tasks or engage in non-preferred activity, she will shut down and refuse to work or communicate. Student

believed that Student had become co-dependent on assistance and this impacted Student's independence in the classroom.³⁸ [REDACTED] testified that [REDACTED] has the ability to authorize and provide aides in therapeutic day schools contracted to [REDACTED] if the IEP team determines a dedicated aide is required.³⁹ Parents disagreed with the IEP team's removal of Student's 1:1 aide.⁴⁰

9. The November 2015 IEP provided for Extended School Year (ESY) services.⁴¹ "The rationale provided was that [Student will experience an impediment in learning or maintaining critical life skills with an interruption in services. [Student] is most successful when given the opportunity for daily repetition of academic skills. Student demonstrates inconsistency with her skills in different settings." Id.
10. Rebuttal witness [REDACTED] testified that when Student left [REDACTED] school she could not count independently, could not add single digit numbers without manipulatives and while reading some sight words with maximum prompting, and could not read independently.
11. On December 2, 2015, [REDACTED] completed Student's intake assessment for [REDACTED]. [REDACTED] testified credibly that since December 2015 she has been Student's Social Worker. [REDACTED] holds a Master's degree in social work and is a licensed clinical social worker. The intake assessment notes under Adaptive/Daily functioning state: "Student's needs paraprofessional support with personal care and hygiene. [Student needs maximum support with her morning routine (i.e. take off coat, hang up backpack put away materials and lunch). These are things that, prior to this school year, she used

requires paraprofessional support to be successful during school day. JE7-6. Per physical therapist, Student is able to transition in hallways with adult support for supervision and to help carry her materials. JE7-9 English IEP Goal: Language arts goal: "Other considerations" Je7-24,28,32. One on one support."

³⁸ JE7.

³⁹ [REDACTED] testimony.

⁴⁰ [REDACTED] and [REDACTED] testimony.

⁴¹ JE7-64.

to do independently or with minimal prompting.”⁴² The November 2015 IEP provided for 15 minutes per week (“mpw”) of occupational therapy, which [REDACTED] implemented.

12. [REDACTED] is Student’s classroom teacher. [REDACTED] has a master’s degree in education and holds an LBS-1 and Type-3 certification. [REDACTED] testified credibly that beginning in December 2015 she implemented Student’s November 23, 2015 IEP in the classroom, utilizing the accommodations and modifications specified.⁴³ [REDACTED] felt the IEP’s reading, math, and social science goals were appropriate for the Student.⁴⁴ [REDACTED] believes that she has a good relationship with Student as evidenced by Student’s progress following her return from maternity leave in January 2017.

13. On February 4, 2016, an IEP meeting was held at [REDACTED] to revise the IEP of 11/23/2015. [REDACTED] recommended that the IEP be changed to provide more choices in what Student would be studying, so that there would be more opportunity to integrate Student’s academics into the classroom academics.⁴⁵ [REDACTED] requested that the social work minutes were increased to account for the actual amount of services Student was receiving in this area.⁴⁶ The major revisions were: 1) Vision services were added back into the IEP; 2) Social work minutes per week (“mpw”) were adjusted from 30 mpw to 60 mpw and the occupational therapy mpw were also increased; 3) [REDACTED] (social worker) was added as implementer and monitor. The coordination of the plan with Student’s parents was also adjusted to reflect phone and email communication between the social worker and Student’s parents.⁴⁷

⁴² Je19-14.

⁴³ [REDACTED] testimony. JE7-(11-18).

⁴⁴ [REDACTED] testimony.

⁴⁵ [REDACTED] testimony.

⁴⁶ [REDACTED] testimony.

⁴⁷ JE9-(61-62).

14. Beginning in the Fall of 2010, Student began to work with [REDACTED], a private speech pathologist, on the average of twice per week. Parents selected [REDACTED] to work with Student because of her familiarity with apraxia.⁴⁸ Each session lasts approximately 45 minutes. [REDACTED] explained that, in addition to apraxia of speech, Student has dysarthria. Dysarthria is a motor speech disorder affecting muscles in the mouth, face, and respiratory system, making Student's range of muscle movement to form sounds and the necessary respiratory control difficult. [REDACTED] credibly testified that Student's speech motor impairment was severe and Student is functioning well below her age and cognitive level. She has never observed Student in the classroom at [REDACTED]. During the 2015-2016 school year, [REDACTED] was in contact with [REDACTED] regarding [REDACTED]'s work with Student. [REDACTED] provided [REDACTED] with videos of her interaction with Student. [REDACTED] reviewed and approved Student's speech/language IEP goals.⁴⁹

15. [REDACTED] described a session with Student during which Student created a story regarding a character named "[REDACTED]"⁵⁰ Creating this story involved the use of Student's higher-level thinking skills. Initially, [REDACTED] helped Student create a thinking map.⁵¹ Using this thinking map, [REDACTED] helped Student create a story by initiating the first portion of a sentence and letting Student complete the sentence. Student dictated and [REDACTED] typed the story on her computer. [REDACTED] stated that the dictated sentence was grammatically correct and that Student indicated a new paragraph was necessary. This story was created in one session. [REDACTED] did not keep data regarding the number of prompts or the extent of cueing provided to Student when writing this story. [REDACTED] described Student as excited when she returned home with the [REDACTED]

⁴⁸ [REDACTED] testimony.

⁴⁹ [REDACTED] testimony. [REDACTED] testimony. R21-2.

⁵⁰ P29-1.

⁵¹ P29-2.

story, and she videotaped the Student reading the story.⁵² These successes were not communicated to [REDACTED]

16. [REDACTED] is Student's Speech/Language Pathologist at [REDACTED] [REDACTED] holds a Bachelor's Degree in Psychology and a Master's degree in Speech Communication Disorders. She is certified by the State of Illinois and the American Speech-Language-Hearing Association ("ASHA"). [REDACTED] testified credibly that she keeps fair and accurate notes of her sessions with Student and records them each session in the Capture system.⁵³ [REDACTED] was aware of and implemented Student's IEP of November 11, 2015⁵⁴ in the area of speech/language. [REDACTED] was present at the IEP revision meeting of February 4, 2016⁵⁵ and at the IEP meeting on January 9, 2017.⁵⁶ Student's IEP provides for three goals in the area of speech/language, ⁵⁷ which [REDACTED] found to be measurable and appropriate and which she implemented in her work with Student. [REDACTED] was aware that Parents had [REDACTED], a private speech pathologist, working with Student. [REDACTED] consulted with [REDACTED] regarding the Student's IEP goals and implementation of those goals.⁵⁸ [REDACTED] found the agreed upon goals to be appropriate and measurable. [REDACTED] felt Student was making progress toward these goals.

17. In May 2016, Parents contacted [REDACTED] for an evaluation of Student. [REDACTED] supervised the Student's evaluation. [REDACTED]'s evaluation team included [REDACTED] and [REDACTED].

⁵² P36. USB flashdrive.

⁵³ [REDACTED] testimony. R-18 (1-74).

⁵⁴ [REDACTED] testimony. JE7-(42-47)

⁵⁵ JE9-2.

⁵⁶ JE17-1.

⁵⁷ JE7-43. Annual Goal: Student will respond to social, curriculum-based, and/or personal interest questions using works of AAC device with at least 2-3 word phrases reflecting accurate syntax in 18/20 trials with no more than 5 verbal prompts. JE7-45, Annual Goal: Incorporating curriculum-based vocabulary, Student will be able to produce /f/,/s/, 'sh' in all positions within a carrier phrase (I see/need, want) to respond to questions 18/20 trials given no more than 5 verbal, visual and/or tactile cues. JE 7-47, Annual goal: To demonstrate use and knowledge of appropriate social language skills. Student will produce three syllable utterances on 18/20 trials independently to initiate request, comments, greetings.

⁵⁸ [REDACTED] and [REDACTED] testimony.

M.S. ("██████████"),⁵⁹ an educational specialist in placement issues who assisted with the Student's evaluation.

18. On June 2, 2016, ██████████ and ██████████ held a meeting with Parents. The reason for the meeting was to suggest implementing more functional skills into the Student's day.⁶⁰ ██████████ credibly testified that she explained to Parents that Student was engaging in disruptive behaviors, including inappropriate touching and failure to sit in her chair, and these behaviors were impacting Student's academic work. Student was refusing to participate in academics.⁶¹ Parents were told that behavior and functional skills must come first, to allow Student to access academic material.⁶² Parents wanted Student to stay in the classroom and continue academic studies. They were not interested in pursuing a functional curriculum for Student.⁶³

19. On June 27, 2016, ██████████⁶⁴ observed Student at ██████████. Her observations were recorded and the written document was provided to ██████████ and ██████████. ██████████'s report notes that this was a summer observation and the class was smaller, two boys and Student. ██████████ and an aide were present. Student was crawling on the floor. Despite being asked by both ██████████ and the aide to continue work on an alphabet puzzle, Student refused. Student then climbed on a table and laid on top of it. Student was warned that she would be given a time out but did not listen to the warning. Student was removed from the educational setting for 5 minutes. When Student returned she was requested to sit at her desk and complete a worksheet. Student refused. ██████████ tried to engage Student by requesting to see her work on

⁵⁹ ██████████ did not testify, but her report was admitted through ██████████

⁶⁰ ██████████ testimony. ██████████ testified that she was told by these teachers that Student could benefit from a functional lifeskills program.

⁶¹ ██████████ testimony.

⁶² ██████████ testimony.

⁶³ ██████████ testimony. Hahn stated that she did not feel the Parents were looking for functional skills.

⁶⁴ ██████████ did not testify. Her findings were admitted during ██████████'s testimony.

her story. Student refused. Student was requested to make a green choice on her behavior chart so she could watch 'Paw Patrol', a favored activity. She refused.

██████████'s impression was that Student "spent the time toying with the adults in the room, who were unable to change her behaviors".⁶⁵ The report indicates that ██████████ advised ██████████ that she felt Student would benefit from a curriculum which emphasized more functional skills. ██████████'s report states there was an extreme discrepancy between Student's reading (at about the first grade level) and math (kindergarten level) skills in comparison to the other students and that Student's behavior plan did not appear to be successful. ██████████'s report recommends that Student be placed in a different therapeutic program, such as ██████████ (emphasis added), with peers who function at her ability level. Student needs to be exposed to a variety of behavior plans until one is created that is successful for her unique needs. Student's curriculum needs to be presented using a highly structured instruction program, such as TEACCH,⁶⁶ and a dedicated assistant to support her at all times.⁶⁷

20. During the summer of 2016, Student attended an intensive language program for children with apraxia, the ██████████ program ("██████████") in ██████████, ██████████. A screening of Student before ██████████ was done by ██████████ administered the Peabody Picture Vocabulary Test-4th Edition (PPVT-4) to measure the Student's receptive vocabulary as compared to age matched peers. Student received a standard score of 72, at the 3rd percentile, with an age equivalence of 6 years, 7 months. ██████████ noted that Student's score is fairly consistent to the score Student received in 2012 when she received a standard score

⁶⁵ p9-2.

⁶⁶ TEACCH (Treatment and Education of Autistic and Communication related Handicapped Children) is an evidence-based service, training, and research program for individuals of all ages and skill levels with autism spectrum disorders. Why Student would benefit from this type of education method was not explained.

⁶⁷ p9 (1-3).

of 68. The consistency in her standard scores suggests growth at the same rate as her peers; although, she is still not closing the gap between her level and the level of age match peers.⁶⁸

21. The [REDACTED] program was five weeks long and provided Student with two 30-minute sessions per day. During these sessions, Student would experience 200 repetitions of two phrases. Parents would repeat the phrases 200 more repetitions during the rest of the day. The program used the Dynamic Temporal and Tactile Cueing (DTTC) method, which includes extreme repetition and prosody (inflection in speech). Parents, [REDACTED] and [REDACTED] all found Student's speech progress after the completion of this program to be remarkable.⁶⁹
22. On August 24 and 31, 2016, the Rush evaluation continued, with Student being tested by [REDACTED]. The results of the testing was reported in an evaluation dated October 28, 2016.⁷⁰
23. Beginning in August 2016, [REDACTED] and [REDACTED] began exchanging a communication log to monitor Student's speech progress.⁷¹ [REDACTED] observed that Student began stuttering. [REDACTED] attributed this development to there being too much intensity placed on learning and the intensity of motor-speed work. [REDACTED] unilaterally discontinued her use of DTTC method. [REDACTED] did not consult with [REDACTED] and did not communicate this change to [REDACTED].⁷² After November 2016, [REDACTED] did not continue her participation in the log. [REDACTED] maintained the log despite [REDACTED]'s lack of response.
24. On September 13, 2016, an IEP meeting was held at the request of the Parents⁷³ to consider a revision to the November 23, 2015 IEP. [REDACTED] testified Parents were

⁶⁸ P17-2. JE13-1.

⁶⁹ [REDACTED], [REDACTED] and [REDACTED] testimony.

⁷⁰ [REDACTED] testimony, P12.

⁷¹ P-26.

⁷² [REDACTED] testimony.

⁷³ [REDACTED] testimony.

concerned Student required a 1:1 aide, that Student's placement was [REDACTED] was not appropriate and that Student was not making educational progress. [REDACTED] testified that the Parents called the meeting to discuss Student's progress and to investigate alternatives to Student's green/red behavior incentive program as suggested by [REDACTED].⁷⁴ The 1:1 aide was discussed and the team determined that it would be best to continue data collection of behavioral progress and independence to allow the team to appropriately assess Student's need for one-on-one support.⁷⁵ The Functional Behavior Assessment ("FBA") was revised⁷⁶ and Behavior Intervention Plan ("BIP") portions of the IEP were revised.⁷⁷ Behavioral logs were to be shared with Parents. The independent functioning goal was revised, due to Student's inability to attain any progress the way the goal was written.⁷⁸ The social work goal was adjusted to reflect new trials and added supports for the Student's success.⁷⁹ The English Language Arts goal was revised to provide that Student would complete the goal independently 20% of the time.⁸⁰ The speech goals were reviewed and it was determined that Student was making appropriate progress, and the specialists determined with the team that the goals should be revised after the re-evaluation data is collected in November.⁸¹ The speech goals were in line with what [REDACTED] and

⁷⁴ The IEP (JE10-11) specifies that on 8/3/2016 Parent requested a meeting to discuss [Student's] LRE and progress toward IEP goals. Parent is concerned as to whether or not JCFS is the most appropriate environment to meet her needs. Parent is concerned that [Student] has been exhibiting an increase of behaviors.

⁷⁵ JE10-14. JE10-63.

⁷⁶ JE10-64 and JE10-58. "To provide [Student] immediate feedback on her choices within the classroom, staff has created a choice chart. When Student makes a good (green) choice like remaining in [Student's] seat, [Student] receives a green smiley face. When Student makes a red choice [Student] received a red Velcro on her sheet."

⁷⁷ JE10-64. "The team added that when coordinating the behavior plan with the student's parents, the IEP team will share behavioral logs. The team also changed the 'expected behavior change' in section 6 to reflect the new more attainable goal, including access to the visual break card."

⁷⁸ [REDACTED] testimony JE10-43. JE10-64. It is noted that the revision is consistent with the BIP and FBA revisions specified above.

⁷⁹ [REDACTED] testimony. JE10-64.

⁸⁰ JE 10-47. [REDACTED] testified she was unaware of this modification and disagreed with the 20% success benchmark.

⁸¹ JE10-64.

██████ had discussed, and both ██████ and ██████ found these goals to be appropriate.⁸²

██████ testified credibly that the speech and language goals were at a pretty high level and in line with Student's current level of functioning.⁸³ ██████ testified that she implemented the revised IEP of September 2016 and found it to be appropriate. The occupational therapy goal was reviewed and not revised for the same reasons the speech goal was not revised.

25. On October 28, 2016, ██████ issued a neuropsychological evaluation based on ██████'s May J ██████ observation and Student's testing with ██████ in August 2016. The ██████ evaluation recommended the Student be educated with peers who function at Student's ability level and allow Student the opportunity to make academic gains and develop friendships. Student's curriculum needs to be presented using a highly structured instructional program, such as TEACCH, which utilizes a structured visual approach that is rooted in behavioral therapy in order to produce meaning and independence. "It is essential [Student] has a dedicated assistant to support her at all times due to her significant language deficits and lack of independent functioning." It was recommended that [Student] be placed in a program such as ██████ (emphasis added) in ██████, IL, which would "provide appropriate academic, language, emotional and social supports she requires."⁸⁴

26. ██████ summarized her findings during her credible testimony, finding the Student to be withdrawn at school and at home, having attention problems (higher at school than home), poor visual motor processing speed, reasoning at borderline range, learns better with more visual stimuli, can engage and show some intellectual functions, phonological awareness was very poor, difficulty with articulation (due to hypotonia),

⁸² ██████ and ██████ testimony.

⁸³ JE10-35.

⁸⁴ P12-5. It is unclear how ██████ and ██████ determined ██████ to be an appropriate program for Student in October 2016, as both ██████ and ██████ testified that they did not observe ██████ until March of 2017.

poor decoding,⁸⁵ poor fine motor skills when writing, reduced spelling skills,⁸⁶ math extremely low,⁸⁷ divided attention extremely low (needs a-lot of redirection).

Intellectual abilities were measured utilizing the WISC-V, WISC-V Integrated and TONI-4. [REDACTED]'s report stated:

- Student obtained a Full Scale IQ score of 44 (<1st percentile, extremely low range). The Full Scale IQ is comprised of the following: a verbal comprehension score of 50 (<1st percentile, extremely low range), a Visual Spatial score of 53 (<1st percentile, extremely low range), a Fluid Reasoning index score of 61 (<1st percentile, extremely low range), and a Working Memory composite of 55 (<1st percentile, extremely low range). Due to [Student's] history of a language disorder and continued expressive language difficulties, the Test of nonverbal Intelligence, Fourth Edition was administered. The TONI-4 is a nonverbal assessment of intelligence, aptitude, abstract reasoning, and problem solving. [Student obtained a TONI-4 Index Score of 74 (4th percentile, borderline range).

[REDACTED] further testified that Student was capable of reasoning in the borderline range, maintain attention for a select amount of time, and engage and show some intellectual function. [REDACTED] did not correlate her findings to an age specification. [REDACTED] recommended Student have a one-to-one aide to assist with redirection, prompting, and breaking down concepts.

27. [REDACTED] and [REDACTED] both observed Student at [REDACTED] on November 22, 2016 for approximately 55 minutes. Why [REDACTED] and [REDACTED] observed Student after they had completed their evaluations was never explained. Nor did they update their evaluation after this observation. Their notes on the observation were admitted into evidence. [REDACTED] and [REDACTED]'s reports are similar. Neither report indicates that Student's teacher(s) were interviewed. Both reports conclude that the rewards system from June 2016 appears to be in place.⁸⁸ [REDACTED]⁸⁹ is identified as doing a

⁸⁵ Similar to individuals below first grade level.

⁸⁶ Student can spell cat, book and home.

⁸⁷ Student can count and identify shapes when attentive.

⁸⁸ Neither report appears to acknowledge that Student's behavior plan was revised in September 2016. JE10-64

⁸⁹ It is not clear whether [REDACTED] and [REDACTED] understood that [REDACTED] was the classroom paraprofessional.

good job in both reports. [REDACTED] concluded that Student would benefit from being placed in a different therapeutic day school,⁹⁰ that Student did not appear to learn anything new, that [REDACTED]'s recommended teaching changes were not being implemented, and that the gap between Student and Student's classmates continued to vary greatly. [REDACTED] has not discussed her findings with anyone at [REDACTED]. [REDACTED] did not specify [REDACTED] in her recommendations.

28. Beginning in December 2016,⁹¹ [REDACTED] started a journal with [REDACTED]⁹² and [REDACTED] to track Student's daily activities at [REDACTED]. [REDACTED] stated that the journal was necessary because Student could not tell Parents what she was doing during class. The journal is undated but appears to cover the period up to Mother's Day 2017.
29. [REDACTED] completed Student's Occupational Therapy Evaluation on December 19, 2017.⁹³ [REDACTED] interviewed [REDACTED] and [REDACTED], completed a record review, student interview, student observation and standardized assessment. [REDACTED] found Student's classroom expectations were: 1) to be in her seat, follow directions, and to attend to whole/group/small group instruction. [Student] is expected to attempt her work in class. [REDACTED] noted that Student attempts (emphasis added) to manipulate smaller classroom items, is able to open some classroom containers, assists (emphasis added) in managing her backpack, and can access her cubby. Student has difficulty removing the tops from markers and glue bottles, using scissors, and manipulating smaller classroom items.⁹⁴ Under related self-help activities, [REDACTED] finds Student's strengths are: 1) can put on her coat with cues, toilet independently, put on shoes (often on wrong foot) and drink from a straw. However, Student

⁹⁰ [REDACTED] did not recommend a specific therapeutic day school in this report.

⁹¹ This was inferred from the first entry written by [REDACTED] indicating that a small birthday party was planned for Student on Saturday. Student's birthday is December 19.

⁹² Both teachers communicated through the journal. [REDACTED] was on maternity leave until January 9, 2017.

⁹³ JE-12. [REDACTED] testimony.

⁹⁴ Je 12-3.

requires support in opening lunch bag, managing fasteners, engage a zipper, button or tie shoes, complete self-help routines. ██████ suggests that, to increase student's ability to complete school related self-help activities, the school should continue to fade physical support to increase independence. Under written communication and computer use, ██████ notes that Student requires significant adult support and adaptation/modifications to complete written work in the classroom.⁹⁵ After reviewing Student's standard assessments, ██████ finds Student's scores illustrate that "the way that [Student] processes sensory information from the various stimuli around her is very different from other children her age."⁹⁶ Further, "[Student] often benefits from extra adult cueing to complete academic and functional tasks at school...[and] benefits from 1:1 re-teaching of information presented during whole group instruction."⁹⁷

30. On December 20, 2016, ██████ completed Student's Speech-Language Assessment in association with Student's triennial reevaluation. ██████ reviewed Student's health history, reviewed student records (including the report from the CAS Summer Intensive Program), reviewed academic findings, conducted classroom observations, a Student interview, received input from classroom staff and social worker, and performed personal observations and additional informal assessments⁹⁸. ██████'s overall conclusion was that Student had an expressive language disorder and sound issues in the areas of articulation/phonology, language, fluency, and pragmatics which adversely affect Student's educational performance. It was noted that

⁹⁵ Je12-3.

⁹⁶ JE12-5

⁹⁷ Id.

⁹⁸ ██████ noted that Student's expressive and receptive language skills were assessed using the Preschool Language Scale-Fourth Edition (PLS 4). Standard scores could not be calculated due to Student's advanced age. Results of the assessment were obtained to use as a guideline of Student's receptive and expressive language strengths and difficulties. JD13 (4-5); JE17-32

Student's severely delayed receptive and expressive language skills negatively impact Student's ability to fully participate in the general education classroom and has an academic impact in the area of reading, math and language arts.⁹⁹ Student's communication impairment also impacts her socially as Student has difficulty being understood by peers and/or adults, and has difficulty initiating, maintaining and terminating verbal interactions. Under additional comments, ██████ noted that Student has very limited social skills and is generally very engaging but is heavily reliant on adults to initiate and support her social communication. ██████ recommended continued speech and language services for 120 minutes per week, and 30 minutes per week consultation with Student's teacher to address Student's needs in the areas of expressive and receptive language, articulation/intelligibility, voicing and pragmatic language. ██████ also recommended modifications to facilitate speech fluency.¹⁰⁰

31. ██████ completed Student's psychological re-evaluation on December 21, 2016. ██████ reviewed Student' records, observed Student, talked to staff, reviewed the outside neuropsychological ██████ report¹⁰¹, gave Student a brief intelligence test, and did other assessments. She did not talk to Parents. ██████ agreed with all of the ██████ testing results. ██████ opined that to attain the same score at an older age, Student would have to have mastery of the original skills and show acquired new skills. Progress monitoring should be on specific skills, and not just testing. ██████ disagreed with the ██████ recommendation of a 1-to-1 aide because of concerns Student would become too reliant on the 1-to-1 aide. This is "learned helplessness." ██████ referred to a comment that specified that Student seems to

⁹⁹ ██████ testimony JE13-(4-5).

¹⁰⁰ ██████ testimony JE13-5.

¹⁰¹ ██████ report did reference the ██████ report, but it was not reviewed.

act out to get adult attention.¹⁰² ██████████ conceded that the inability to engage in a skill that the child previous had could possibly point to regression.

32. An IEP meeting was held on January 9, 2017. The purpose of that meeting was to update the IEP and to develop goals and objectives.¹⁰³ ██████████ was the case manager who was present. ██████████ testified that Parents were present and raised concerns about Student's lack of a 1:1 aide and the appropriateness of ██████████ to meet Student's needs. This was documented in the IEP.¹⁰⁴ ██████████ was present and testified that the team could not agree on a 1-to-1 aide for Student, had academic concerns due to Student's refusal to engage, and did not note any regression.¹⁰⁵ The Specialized Instruction Section of the IEP provides that interventions that are attempted every period to encourage work production and positive behavior are one-on-one instruction and dedicated paraprofessional support.¹⁰⁶ The FBA notes, "[Student] has shown dramatic improvement this school year compared to quarter 3 and 4 of last school year."¹⁰⁷ The FBA also credits Student's behavior changes to Student's greater independence.¹⁰⁸ The IEP at JE17-3 states that Student was successful in meeting her benchmarks. Parents were advised that the purpose of the IEP meeting was to develop the IEP and not to discuss placement.¹⁰⁹ ██████████ testified that she told Parents that specific schools was a District decision and to contact the District. District witnesses' testimony acknowledged Parent's request that Student receive an expanded functional curriculum. This request surprised both

¹⁰² JE14-4.

¹⁰³ ██████████ testimony.

¹⁰⁴ ██████████ testimony.

¹⁰⁵ ██████████ testimony.

¹⁰⁶ JE17-19

¹⁰⁷ JE17-50.

¹⁰⁸ JE17-51, Presumed purpose of targeted behavior. "It is important for the team to continue reinforcing [Student's] independence because when [Student] first arrived at ██████████, she exhibited many co-dependent behaviors."

¹⁰⁹ ██████████ testimony.

██████████ and ██████████. ██████████ attempted to address the functional curriculum by adding a hair brushing goal to OT, which was turned down by ██████████. ██████████ was the speech pathologist present at the IEP meeting on January 9, 2017. ██████████ approved of the speech/language goals, which she found to be individualized and appropriate. ██████████ also approved these goals.¹¹⁰

33. The January 9, 2017 IEP states: "Parents believe that ██████████ is not the appropriate placement to meet [Student's] needs. If ██████████ denies the request for placement change at ██████████, then Parents will file due process."¹¹¹ Parents requested that an IEP statement of dissent be attached to the January 2017 IEP. The dissent lists the following reasons: "1) [Student's] current level of functioning is significantly below classmates and [Student] requires a program with individuals with similar cognitive and behavioral profiles."¹¹²

34. ██████████ is the classroom paraprofessional in Student's class;¹¹³ she assists ██████████. ██████████ credibly testified that Student started at ██████████ doing well, but Student's behavior declined in March 2016, which ██████████ believed was related to the death of Student's maternal grandmother and the absence of ██████████ at home. However, ██████████ testified that she saw improvement, in Student's behavior beginning in September 2016 and continuing to date of hearing. Student has been consistently completing assignments since January 2017. Student's functional skills have improved greatly, and Student does not need prompting to put things away, open her breakfast and juice box or wash her hands. ██████████ stated that Student "seeks out staff during class but seeks peers during recess."

¹¹⁰ ██████████ testimony.

¹¹¹ JE17-8.

¹¹² JE18-1.

¹¹³ It is noted that the ██████████ evaluation refers to ██████████ as Student's special education teacher, which is inaccurate.

35. [REDACTED] has a Master's in Social Work and is a licensed clinical social worker, type 73. [REDACTED] testified credibly that she provides group social work in the classroom to 7 students, including Student, with the assistance of 4 adults. The group class consists of check in, superhero coping skills and yoga on the floor. [REDACTED] testified that she uses the Capture service for notes on the group work she provides.¹¹⁴ [REDACTED] is aware that Student does not have childhood emotional disorder, unspecified as indicated on the Capture sheets,¹¹⁵ and that this category code is used by all [REDACTED] clinicians. Student has friends in the classroom who look after and take care of Student, acting like big brothers. [REDACTED] noted that Student has progressed from the Spring of 2016 to the current day. Student now shows a willingness to participate in group discussions.
36. Parents believe that Student is not making progress and that their voice is not being heard.¹¹⁶ [REDACTED] keeps a daily journal with [REDACTED] to follow Student's activities.¹¹⁷ Following the IEP of January 2017, [REDACTED] came up with a curriculum to assist [REDACTED] and [REDACTED]. [REDACTED] instituted a school journal¹¹⁸. Each morning she would compose a short statement and Student would write three responses. [REDACTED] believes that Student is only tracing answers and not writing the answers. [REDACTED] feels Student is missing out at [REDACTED], stating that Parents fought for Student and it is difficult to see her backslide and not make progress. [REDACTED] wants Student to go to the grocery store, cook, have friendships and have all those things everyone else does.
37. [REDACTED]'s credible testimony was that Parents requested the [REDACTED] evaluation due to concerns about the lack of Student progress in Student's current setting. [REDACTED]

¹¹⁴ R20-(50-80).

¹¹⁵ R20-(50-80)

¹¹⁶ [REDACTED] and [REDACTED] testimony.

¹¹⁷ [REDACTED] testimony. P27.

¹¹⁸ p-28.

testified that, based on her evaluations, Student will not be independent. [REDACTED] believes Student needs a functional program, but that the primary focus at Student's age should be academic skills. [REDACTED] found that Student requires a 1:1 aide, preferably with applied behavioral analysis ("ABA") training,¹¹⁹ because much of Student's learning is prompt dependent. [REDACTED] did not explain why she recommended [REDACTED] in the October 2016 report. However, she did observe the [REDACTED] program in March 2017, and she found a larger population of students that she believed were at Student's cognitive level.¹²⁰ [REDACTED] observed some lower functioning and higher functioning classrooms. The student/teacher ratio was 5 students to 3 adults. There was a female in the classroom that [REDACTED] believed might be an appropriate placement for Student. [REDACTED] conceded that school student populations fluctuate a lot in therapeutic day schools. [REDACTED] believed there were individuals trained in ABA and BCBA (part-time) on staff but was not certain. [REDACTED] observed interaction with non-disabled students from [REDACTED] school, so there would be access to general education populations.¹²¹ [REDACTED] believes interacting with peers could be important. [REDACTED] stated that she never personally observed Student at [REDACTED] and was aware that [REDACTED] does have programs that would offer Student the opportunity to interact with general education peers.

38. [REDACTED] testified that she observed the [REDACTED] program. During her observation, [REDACTED] found the program to be small and quiet (no emotional outbursts); there were activities with peers; teacher/student ratio was smaller; they taught functional skills; there was integration with peer of age and cognitive peers. [REDACTED] stated that she did not

¹¹⁹ Applied behavior analysis is the process of systematically applying interventions based upon the principles of learning theory to improve socially significant behaviors to a meaningful degree, and to demonstrate that the interventions employed are responsible for the improvement in behavior

¹²⁰ [REDACTED] stated she was able to infer cognitive abilities and did not indicate the age of these students.

¹²¹ It is noted that the parents did not contest LRE.

visit any other school regarding Student's placement, and that she relied, in part, on ██████'s recommendations. She also testified that she was unaware of student behaviors, and she did not know if anyone at ██████ was ABA certified or TEACCH certified.¹²²

39. ██████ testified that he is a Manager for ██████ and is responsible for assigning students, monitoring and overseeing schools outside of ██████, and training and insuring compliance with ██████ procedures at those outside schools. When determining separate day schools, he considers Section 226.330 of the School Code.¹²³ ██████ also determines if the requirements of Section 226.330¹²⁴ are being met by the private placement schools. He testified that ██████ is a top tier school which assists students in making progress on their IEP goals and benchmarks, works with students, and has high performance rankings and good reintegration rates to generalized educational settings. ██████ is one of the schools that ██████ monitors, and he stated that his familiarity is primarily in the K-5 grades. ██████ stated that he had concerns about ██████'s ability to implement student's IEPs and report the progress or lack of to the District, as well as ██████'s failure to provide qualitative and quantitative evidence of services to the District. The failure to report progress is a major concern because the District must have information to allow IEP decisions to be made concerning a student. ██████ is familiar with verbal and physical manifestations being reported about ██████ students at ██████, including yelling, removing clothing and non-compliant behaviors. ██████ knows that there is one TEECH certified teacher and one ABA certified teacher, who is not full time, at ██████. ██████ knows that there are District programs available that

¹²² ██████ admitted she did not see the TEECH method being implemented.

¹²³ 23 IL Admin Code §226.330.

¹²⁴ 23 IL Admin Code §226.330 (f).

provide peer interaction and would be appropriate for Student, but he did not elaborate on which programs.

40. ██████ testified credibly that the ██████ program's age range is between 6 years old and Fifth grade. When asked about a program for Student for the 2017-2018 6th grade school year, ██████ testified that there would be a special group available. He did not elaborate.¹²⁵ ██████ testified that ██████ is a holistic program working with students on behavioral, academic and functional needs. ██████ has a scope and philosophy of working with parents. ██████ is open to working with student's Parents as evidenced, in this case, by allowing Parents, their preference of, the ██████ classroom, the open communication with Parents, as well as the daily journal. If Student remains at ██████, the classroom will be reorganized over the summer to make opportunities available for Student. ██████ pointed out that ██████ has social options available for Student where Student would be able to interact with peers - such as art, lunch, and during gym.¹²⁶ ██████ works with functional skills with all students. ██████ also has a transitional program for the high school level.

41. ██████ observed Student in the classroom on May 17, 2017. He stated it took over a month to arrange this observation. He observed Student refused to do work, walk around the class, throw her stuff on the ground and begin crying. While this was taking place, the other students were focused on their work. ██████ indicated that he has been a teacher for ██████ for 20 years and that he knows that the ██████ placement is not appropriate because the Student is not learning. ██████ wants Student to be educated at ██████ because ██████ includes boys and girls together. ██████ is familiar with ██████ because Student attends Sunday School at ██████, which is not part of

¹²⁵ ██████ testimony.

¹²⁶ There was no explanation provided as to why Student did not have these social interactions.

the therapeutic program. [REDACTED] stated that at [REDACTED] Sunday school Student learns things and completes work.¹²⁷

42. [REDACTED] testified that Student could get a functional lifestyles program at [REDACTED]. That [REDACTED] has a large bathroom where they practice grooming every morning, and they grocery shop and use money. [REDACTED] stated that when she toured [REDACTED], she focused on younger group because of Student's social, academic and cognitive abilities.

[REDACTED] has a cognitive ability classroom, and [REDACTED] saw at least two girls. [REDACTED] wants Student to live an independent life.

43. There was no testimony or evidence presented regarding [REDACTED] or 1) what type of students are enrolled; 2) whether it is certified by ISBE for the type of disabilities identified on Student's IEP; 3) whether staff are experienced in the DTTC program; 4) whether staff are experienced in the TEECH program; 5) whether [REDACTED] has a psychologist, social worker, speech pathologist and occupational therapist capable of implementing this Student's IEP; 6) whether [REDACTED] has the ability to implement this Student's BIP and FBA; 7) whether there are classes with students who are near Student's age and who have the same cognitive skills as Student; 8) the social female/male ratio of the program; 9) whether [REDACTED] feels it can implement Student's IEP and 10) whether there is an opening for Student in an appropriate program for the 2017-18 school year.

A. General Law

The Individuals with Disabilities Education Act ("IDEA") "requires States receiving federal funds to make a free appropriate public education (FAPE) available to all children with disabilities residing in the State. *Forest Grove School District v. T.A.*, 557 U.S. 317, 230, 238, 129 S.Ct. 2484, 2492 174 L. Ed.2d. 168 (2009) "A free appropriate public education is one 'specially designed to

¹²⁷ [REDACTED] did not elaborate on what Student learns or what type of work Student completes.

meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.” *Murphysboro Community Unit Sch. Dist. No. 186 v. Illinois State Bd. of Educ.*, 41 F.3d 1162, 1166 (7th Cir. 1994) (quoting *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct 3034, 73 L.Ed.2d 690 (1982)). The Supreme Court’s unanimous decision in *Andrew F. v. Douglas County Sch. Dist. RE-1*, 50 U.S. _____, 69 IDELR 174 (2017), updates the long used *Rowley* standard, and said that in order for a district to meet its FAPE obligation under the IDEA, it must “offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances,” a standard “markedly more demanding than the ‘merely more than *de minimis*’ test applied by the Tenth Circuit.” *Andrew F.*, 580 U.S. _____ (Slip op., p. 11). “The goals may differ, but every child should have the chance to meet challenging objectives.” *Id.* The Court, however, rejected the parent’s argument that children with disabilities must be offered an education that provides the opportunities to attain self-sufficiency and contribute to society substantially equal to the opportunities provided children without disabilities. *Id.* at 12.

The IDEA ensures that children with disabilities are provided a FAPE and related services that meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A). The IDEA imposes both procedural and substantive obligations on the State to insure compliance with IDEA requirements. *Rowley*, 458 U.S. at 207-208. *Andrew* expanded on *Rowley*, directly addressing the substantive requirement of IDEA.

20, U.S.C. §1414(d) requires a school district to develop an individualized education program (“IEP”) for each student who receives special education and related services. The education program set out in the IEP must be “individually designed” to meet the child’s unique needs and “reasonably calculated to enable the child to receive educational benefit.” *Id.* While a district is not required to provide “the best possible education, the child must receive more than a *de minimis* benefit.” *Todd v. Duneland Sch. Corp.* 299 F. 3rd, 899, 905 (7th Cir. 2002). In

Andrew F., 580 U.S. ____, 69 IDELR 174 (2017), the Supreme Court affirms this 7th Circuit viewpoint and rejects the 10th Circuit's standard that a FAPE is met if an educational program provides "merely more than *de minimis*" benefit. See *Thompson R2-J School District v. Luke P.*, 50 IDELR 212 (10th Cir. 2008).

To comply with the IDEA's procedural component, a school district must follow all the "guaranteed procedural safeguards" set forth in the Act. 20 U.S.C. Sec. 1415(a); See *Bd. of Educ. v. Ross*, 486 F.3d 267, 273-74 (7th Cir. 2007). One of IDEA procedural requirements is that a school district must assess each disabled child identified by the district for their educational needs, develop an Individualized Education Plan ("IEP") according to that assessment, and review and revise the plan pursuant to the requirements of the Act. 20 U.S.C. Secs. 1401(14) & 1414(a-d); *Ross, Id.* "The IEP is the means by which special education and related services are 'tailored to the unique needs' a particular child." *Andrew F. v. Douglas County School Dist. RE-1*, 580 U.S. ____ (2017) (Slip Op. p.2) (quoting *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)). IEP must include a statement of the child's present level of academic achievement and functional performance, a measurable annual goal that will meet the child's needs, a description of how the child's progress toward meeting the annual goal will be measured, and a statement of the special education and related services that is to be provided to the child. 20 U.S.C. Secs. 1414(d)(1)(A)(i)(I),(II) &(II). Special education is specially designed instruction to meet a student's unique needs. 34 CFR 300.39(a)(1). Special education instruction must be based on peer-reviewed research, to the extent practicable. 20 U.S.C. Secs. 1414(d)(1)(A)(i)(V). Finally, the IEP must identify any program modifications that will be provided to allow the student to advance appropriately toward meeting his or her annual goals, including making progress in the general education curriculum. 34 CFR 300.320(a)(4)(i) – (iii).

The IEP is developed by an "IEP team" comprised of the disabled child's parents, teachers from the child's school, as well as special education teachers and providers (20 U.S.C. Sec. 1414(d)(B)), and the IEP team is required to review the child's "IEP periodically, but not less

frequently than annually, to determine whether the annual goals for the child had been achieved” and revise the IEP if needed. 20 U.S.C. Sec. 1414(4)(A)(i-ii). A district must ensure that each child with a disability within its jurisdiction has an IEP in effect for that child at the beginning of each school year. Section 1414(d)(2)(A).

A school district’s failure to comply with the IDEA’s procedural requirements does “not automatically require a finding of a denial of FAPE.” *Ross*, 486 F.3d at 276. “procedural violations can be held to deny a student a FAPE only if they ‘(I) impeded the child’s right to a free and appropriate public education; (II) significantly impeded Plaintiffs’ opportunity to participate in the decision making process regarding the provision of a free appropriate public education to Plaintiffs’ child; or (III) caused a deprivation of educational benefits.’” *James v. Bd. of Educ. of Aptakisic-Tripp Dist. 102*, 642 F.Supp.2d 804, 816 (N.D. Ill. July 22, 2009) (quoting 20 U.S.C. Sec. 1415(f)(3)(E)(ii)).

This case is about a Student with a very rare and complex genetic disorder. There are no long term studies about this disorder. No special books regarding the best way to educate a child with GAND disorder. Due to Student’s reduced communication skills, standardized testing is difficult. Parent’s expert believes that Student will not be independent. Parents are hopeful that some independence can be achieved. No testimony was presented that anyone - experts, educators or parents - are certain as to the best way to educate this Student or her capacity to retain information. This Student is the type of Student that clearly has unique needs.

The issues raised in Parent’s complaint and addressed by this Hearing Officer are as follows:

- I. Whether the District denied Student’s right to a free appropriate public education from January 25, 2015 up to and through the close of hearing by:**

- A. Failing to develop measurable annual goals designed to meet Student's needs.**
- B. Failing to provide Student with a 1:1 aide at [REDACTED].**
- C. Placing Student in a setting without peers of similar functional or developmental levels.**
- D. Failing to appropriately address Student's behavior when that behavior interfered with Student's ability to access educational programming.**

Failing to develop measurable annual goals designed to meet Student's needs.

Student was placed at [REDACTED] pursuant to a settlement agreement between [REDACTED] and the Parents in the fall of 2015. Although the Parents testified that the settlement offer made at that time provided for a placement at [REDACTED] or two cluster programs which the Parents found inappropriate, the Parents selected [REDACTED]. The Parents were under no obligation to enter into a settlement agreement with the District and they were represented by an attorney. At [REDACTED], the Parents specifically requested Student's placement in the [REDACTED] program. They allege that it was the only program where they thought Student would be safe. No testimony or evidence was presented that [REDACTED] is a dangerous school. When the program was selected, it was clear that Parents were aware that the [REDACTED] program was predominately Orthodox Jewish males and that Student was unlikely to have female peers, much less female peers with Student's cognitive and social abilities. No evidence was presented regarding the Student's IEPs from January 25, 2015 to November 23, 2015. This analysis will begin with the November 23, 2015 IEP.

The District has presented substantial credible evidence that in November 23, 2015, after Student's acceptance into [REDACTED], an IEP meeting was held where Student's records were reviewed and an IEP was drafted which included goals and accommodations, which testimony

established were believed to be proper and designed to meet the unique individual needs of Student. The Parents were present at the IEP meeting. [REDACTED] was in contact with [REDACTED] and had provided [REDACTED] with the proposed IEP goals for her approval. At this meeting, the team determined that the Student would no longer receive a one-to-one aide. The team theorized that due to the student/teacher ratio in the therapeutic classroom as compared to the special education classroom, Student would no longer need a 1 to 1 aide. Additionally, the team was concerned that Student was not showing sufficient independence and was becoming overly dependent on an aide to assist her with daily and academic activities. Once the [REDACTED] staff became familiar with Student's abilities and unique needs, another IEP meeting was held on February 4, 2016 to revise the IEP to include more inclusive classroom options for Student, increased social work minutes and a vision accommodation and goal.

Following Student's participation in the intensive CASSI course, the IEP team reconvened, at the Parent's request, and again the IEP was revised after consideration of the Cassi recommendations, Parent's input and review of the [REDACTED] findings. Consideration of reinstatement of 1 to 1 aide was deferred for data collection, FBA and BIP was reviewed, and independent functioning goals and social work goals were revised.

After completion of the triannual reassessments, on January 9, 2017, the IEP was again reviewed. The new evaluation was considered, the 1 to 1 aide was considered, Parent's request for a functional curriculum was considered, and the request for a change of location to Keshet was noted. The [REDACTED] staff who worked with Student all found the goals provided in the IEP were measurable and designed to meet Student's needs. Student's successes in meeting previous benchmarks were noted and testimony indicated that appropriate goals were established.

Parents asserted that [REDACTED] failed to develop measurable annual goals designed to meet Student's unique needs. Parent's argue that the IEPs at issue in this hearing were replete with examples of inappropriate goals that were not designed to meet Student's needs. Parent's point to the testimony of [REDACTED] to support this argument. It was clear in [REDACTED]'s testimony,

however, that she had been in contact with [REDACTED] and had discussed and supported the Student's speech/language goals. [REDACTED] found them not only to be appropriate but at "a pretty high level." [REDACTED] did not review the language arts goals in the January 2017 IEP until two weeks prior to her testimony. [REDACTED] stated she was concerned because the percentage of accuracy was less than 80%. During her testimony, however, this appeared to be a general opinion held by [REDACTED] regarding percentage of accuracy on any IEP goal, and did not directly consider this Student's present levels of achievement, disability, and potential for growth. The annual goals that are included in Student's IEP are specific and capable of measurement.

It is therefore determined that the District has developed measurable annual goals designed to meet Student's unique needs that sufficiently comply with the requirements of IDEA concerning the inclusion of measurable goals and has not denied the Student FAPE.

Failing to appropriately address Student's behavior when that behavior interfered with Student's ability to access educational programming.

A student's IEP team is required to conduct an FBA and develop a BIP when a disabled student is subjected to certain types of discipline or when a BIP is warranted because the disabled student exhibits behaviors that impede his learning or the learning of others in the classroom. 20 USC Section 1415(k)(1); 20 USC Section 1414(d)(3)(B)(i). In this case, there is no issue regarding the Student exhibiting behavior that necessitates an FBA and BIP. During the hearing, Parents often referred to their concern that Student's goal was to sit in her seat and be quiet. The District has not denied that Student's behaviors impact her ability to be prepared to engage in academics. One cannot be engaged in academic learning when wandering the room, laying on a desk or engaging in refusal behaviors. Sit and be quiet is one of Student's goals and it is referred to in Student's IEPs and in the BIPs. Following [REDACTED]'s recommendation that the BIP be revised, a revision was made in September 2016. Although [REDACTED] felt the same behavioral program was still in place during her observation in November 2016, the record is

clear that it had been revised. Neither [REDACTED] or [REDACTED] discussed the observed behavior plan with Student's teachers and therefore assumed there had been no change. In the absence of an inquiry, there was no way for [REDACTED] or [REDACTED] to determine if the behavior plan was indeed the same or merely similar. District is tracking Student's behaviors under the September revision and providing behavior reports to Parents. Parent's argued that these reports are insufficient. The reports admitted into evidence do show green (good) v. red (bad) behaviors. Although the actual behavior reports may not be coming as regularly as the Parents would desire, it is also important to note that the teachers and [REDACTED] are communicating about Student's academics and behaviors in two different journals on a daily basis. It was documented in the January 9, 2017 IEP that Student was making progress and that there was a difference in behavior in quarter 1 and 2 of the 2016-17 school year when compared to the 2016 third and fourth quarters. This behavior was linked to a disruption in Student's home life. The BIP is found to be reasonable and calculated to lead to a behavior benefit for Student. Obtaining compliance in Student's behavior will lead to greater availability for education. Both [REDACTED] and [REDACTED] explained to the Parents that behavior skills must come before academics. "Sit and be quiet" may not be an appropriate goal for some students, but it appears that the District did consider Student's unique needs in drafting the goal for this Student. I find this goal to be a measurable annual goal that will meet the Student's unique needs. It is therefore determined by a preponderance of the evidence that the District has appropriately addressed the Student's behavior and has not denied the Student FAPE.

Placing Student in a setting without peers of similar functional or developmental levels.

The District has not denied that Student was not placed in a setting with peers of the same gender, let alone cognitive level. The Parent's have admitted after selecting placement at [REDACTED] they specifically requested the [REDACTED] program. The Parent's sought the assistance and approval of [REDACTED] in order for the Student to participate in this program. It was never

made clear why Parents, who have been aware of Student's social limitations since the [REDACTED] report in 2014 and were concerned about the Student's ability to interact with peers chose the [REDACTED] program, where they knew that Student would be isolated in a population of boys who operated at a higher cognitive level than Student and participated in religious studies which acknowledge separation of the sexes. [REDACTED] testified that an Illinois regulation prevents a wider age variation than 4 years in grade schools and that she thought that the dysregulation present in the younger classroom would not be a proper environment. No testimony was presented about the other classrooms available. It was made clear that a therapeutic day school composition is fluid, however, no testimony was presented that indicated that Parents requested a change from the [REDACTED] classroom to another classroom where peers of the same gender would be present. Parents were well aware of the fact that the discrepancy between Student and her classmates would be extreme when they chose the [REDACTED] classroom. It is therefore determined by a preponderance of the evidence that the District has not denied Student FAPE by allowing Parent's preferred placement in a classroom without peers of similar functional or developmental levels.

Whether the District denied the Student's right to a FAPE by failing to provide Student with a 1:1 aide at [REDACTED].

The November 23 2015 IEP removed Student's one to one aide. The District has shown through credible evidence, in the Form of Student's IEP, that this determination was made by the IEP team because of Student's transfer from a [REDACTED] special education classroom to a small, highly structured setting with low student/teacher ratio. No testimony was presented by the District regarding Student's dependency on an aide at [REDACTED] school. [REDACTED] explained this alleged co-dependency on an aide is known as "learned helplessness." Co-dependent relationships are relationships where one person supports or enables another person. It is incumbent upon professionals charged with the education of children to understand how not to

become enablers and allow children to become dependent on their assistance in the classroom. I reject the District's argument.

During the September 2016 IEP revision, the question of the aide was directly addressed and tabled to allow data collection on the issue of whether a 1 to 1 aide was necessary. No evidence was presented to determine if the data collection ever took place or the results of that collection.

In the January 2017 IEP, a one to one aide was also denied. District presented testimony that Student was taking steps to independence by taking care of her backpack, opening some lunch items and placing educational materials in her cubby - all functional issues. All testimony presented regarding Student's academic work involved a teacher or other adult working directly with Student. ██████ testified that if the IEP team had determined that a one to one aide was appropriate, the District would have provided that aide at ██████.

There are repeated references in the record concerning Student's need for a one to one aide to provide her at school with assistance and "frequent and immediate reinforcement" when she completes "any task." Parents of a child with a disability may obtain a privately funded evaluation by a qualified examiner who is not employed by the school district responsible for educating the child. 34 CFR §§ 300.502(a)(1) and (a)(3)(i). If parents seek and obtain such an evaluation and share it with the school district, the evaluation must be considered in any decision regarding the provision of FAPE to the child. 34 CFR § 300.502(c)(1). An IEP team is required to consider an outside evaluation, though not required to follow it. *TS v. Board of Educ. Of Town of Ridgefield*, 10 F.3d 87, 20 IDELR 889 (2nd Cir. 1993).

Parents engaged the services of ██████ to evaluate Student. ██████'s written recommendation after the June, 2016 observation was that Student needed a dedicated assistant to support her at all times due to significant language deficits and lack of independent functioning. ██████ testified that Student needed a 1:1 aide for several academic related reasons. It is not clear whether Student's IEP team considered these recommendations when determining

that a 1 to 1 aide was not required for Student to make progress. Parents contend that the District erred in failing to follow these multiple recommendations. Parents have also argued that the District's own documents make clear that a 1 to 1 aide is necessary for this Student. Parents point to Student's January 2017 IEP, which provided that Student needs maximum prompting and consistent and immediate feedback for all tasks, and that Student also required frequent and immediate reinforcement when completing any task, but particularly when the task was academic assignments.

The inquiry relevant to a one-to one aide is whether the service is necessary to provide the Student with FAPE. There was no testimony presented regarding the original IEP team's decision to provide Student with a one to one aide. A reasonable inference can be made, based upon the accommodation removal when the therapeutic classroom was selected, that this accommodation was provided Student, in part, based on classroom placement. Initially, the District's thinking is understandable. To move from a classroom of possibly many students to a classroom of 5 students (or fewer) with two teachers may not require a one to one aide. It is reasonable for the District to collect data to determine if a one to one aide is necessary at [REDACTED]. However, it is not reasonable for the IEP team, in January 2017, not to clearly address the Student's need for a one-to-one aide. [REDACTED] testified there was a disagreement regarding the one-to-one aide. The Parents requested reinstatement of the one-to-one aide. The Parents' expert, [REDACTED] specified that a one to one aide was necessary for the Student to make progress in academics. The [REDACTED] report indicates that a one to one aide for Student is necessary for academic and functional reasons. [REDACTED] recommended a one-to one aide. Student's IEP also lists one-on-one instruction and dedicated paraprofessional support as interventions that would encourage work production. All testimony regarding Student's academic progress was based on a one-to-one teaching situation.

It is inappropriate to defer to the opinion of a single psychologist, particularly where that opinion is in conflict with the opinions of "teachers and other professionals." M.B. v. Hamilton

Se. Sch, 668 F. 3d 851, 862-63, 58 IDELR 92 (7th Cir. 2011). However, in this situation, where it is clear that the educators were in disagreement over this issue and there was no evidence presented as to how that disagreement was to be resolved, and where the experts presented by Parents indicate that a one-to-one aide is necessary to access the academic curriculum, and Student's IEP confirms one-to-one teaching, I give deference to the experts. It is therefore determined by a preponderance of the evidence that the District has denied Student FAPE by failing to recognize Student's need for a one-to-one aide to assist Student in accessing the academic curriculum.

II. Whether Student's September 13, 2016 IEP was appropriate in that it failed to:

- A. Provide a 1:1 aide for the Student**
 - B. Include goals that were designed to meet Student's individual needs.**
 - C. Appropriately addressed Student's behavior when the behavior interfered with Student's ability to access educational programming.**
- Provide a 1:1 aide for the Student.**

I have already determined that, as of the January 2017 IEP, the District should have considered the data collection on the issue of one-to-one aide provided for in the September 13, 2016 IEP. I find that it was reasonable for the IEP team to collect data to assist in the determination of whether the one-to-one aide was necessary for this Student. Dr. [REDACTED]'s report and recommendations were not completed as of the September 13, 2016 IEP, and therefore would not have needed to be addressed. Deference for this IEP is given to the IEP team. It is therefore determined by a preponderance of the evidence that there was no denial of FAPE to Student when the IEP team did not provide a one-to-one aide as of September 13, 2016.

Include goals that were designed to meet Student's individual needs.

I incorporate the above discussion about measurable annual goals into this discussion by this reference.

Parents have argued that the goals provided for the Student in English and Math were not designed to meet Student's individual needs. Parent's point to the statements that Student was not completing any academic work. The failure to complete academic work, however, does not relate to whether the goals were designed to meet Student's individual needs. I have already found the goals to be measurable and appropriate. I also find them to be individualized. It is therefore determined by a preponderance of the evidence that there was no denial of FAPE to Student and that the goals were designed to meet Student's individual needs.

Appropriately addressed Student's behavior when the behavior interfered with Student's ability to access educational programming.

I incorporate the above discussion about failing to address Student's behavior into this discussion by this reference.

The September 13, 2016 IEP clearly references that the BIP and the FBA were revised. Testimony at hearing provided that [REDACTED] staff saw a reduction in the behaviors which prevented Student from accessing educational programming after the IEP revision of September 13, 2016. It is therefore determined by a preponderance of the evidence that there was no denial of FAPE to Student and that the District did appropriately address Student's behavior by revising the BIP and FBA on September 13, 2016.

III. Whether Student's January 9, 2017 IEP was inappropriate in that:

- A. The District refused to consider the location and programming of the Student's educational placement.**

- B. The District refused to consider both academic goals and functional skills goals.**
- C. The District failed to provide a 1:1 aide for Student.**
- D. The District failed to accurately report Student's present levels of academic achievement and performance pursuant to 34 C.F.R. §300.320(a)(1).**
- E. The District failed to include goals that address the functional and/or life skills needs that result from Student's disability pursuant to 34 C.F.R. §300.320(a)(2)(i).**
- F. The District, including but not limited to the January 9, 2017 BIP, failed to appropriately address Student's behavior and/or other social/emotional needs**

The District refused to consider the location and programming of the Student's educational placement.

Under the IDEA, the district must "ensure that a continuum of alternative placements is available" to meet disabled students' needs, including an evaluation of regular classes, special classed, special schools, home instruction, and institutionalized instruction. 34 CFR §300.315(a). As previously noted, Parents are not contesting the least restrictive environment or the placement of Student in a therapeutic day school. The issue is whether the brick and mortar school, [REDACTED] is the appropriate location, has the ability to implement the Student's IEP and provides the appropriate programming to implement the IEP. The IDEA defines IEP to include "the anticipated frequency, **location**, and duration of those services." (emphasis added). 34 CFR §300.320(a)(7). The term "location" as used in the IDEA refers to the type of environment that is the

appropriate place for the delivery of services, and not a particular school or facility, classroom or teacher.

The Comments to Part 300 of the C.F.R., p. 46588, clarify the difference between "placement" and "location." "Placement" is defined as points along the continuum of placement options available for a child with a disability, and "location" is defined as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. In resolving this issue, the USDOE concluded that "location of services in the context of an IEP generally refers to the type of environment that is the appropriate place for provision of the service. For example, is the related service to be provided in the child's regular classroom or resource room?" In *Brad K. and Jennifer K., individually and as next friend of Jessica K. v. Bd of Ed of the City of Chicago, CPS #299*, 787 F. Supp. 2s 734, 56 IDELR 197, (N.D. Ill. 2011), the Court found the physical location for implementing an IEP need not be included in the IEP.

Parents in this case appears to argue that the physical location of services, [REDACTED], is part of the IEP and should be considered by the IEP team. District argues that the actual school location, [REDACTED], was selected by the Parents following the settlement agreement in the fall of 2015. The IEP does not specify the physical location of the services and is not required to specify the physical location of the services. District argues that it is unlikely that the IEP team from [REDACTED] would recommend [REDACTED] as the appropriate location for the implementation of the Student's IEP, and that it was appropriate for the IEP team to refuse to consider the Parent's request for a change of location.

The only evidence presented regarding who has the decision-making authority to name a brick and mortar location where services can be appropriately implemented was the settlement agreement provided by the District. Neither Parents nor the District provided any information as to the procedures required to change the brick and mortar

location where a Student's IEP will be implemented. [REDACTED] credibly testified that as the Manager of the Special Education Office for [REDACTED] that he was responsible for "assigning students." He stated that when determining where to implement a Student's IEP, he considers and follows the regulations specified in 23 IL Ad. Code 226 §226.330. That section states: "the district shall refer the child to the agency or facility which is most appropriate to the individual situation." He testified that he considers [REDACTED] a top tier school in comparison to [REDACTED], which did not appear to be providing the required compliance for the implementation of other [REDACTED] students' IEPs. [REDACTED] did not indicate whether Parent had requested that his officer consider a location change.

Based upon my review and the legal standard of preponderance of the evidence, I find that the preponderance of the evidence favors the District. The brick and mortar location of services had already been determined by the settlement agreement, and the IEP team did not have a legal duty to alter the brick and mortar location as long as the team determined that [REDACTED] did have the ability to properly implement Student's IEP.

B & E. The District refused to consider both academic goals and functional skills goals and The District failed to include goals that address the functional an/or life skill needs that result from Student's disability pursuant to 34 C.F.R. §300.320(a)(2)(i).

Under 34 C.F.R. §300.320(a)(2)(i), an IEP that is developed, reviewed and revised in a meeting must include a statement of academic achievement and functional performance, including involvement and progress in the general curriculum. The term "functional" is understood to mean skills or activities that are not considered academic or related to a child's academic achievement (i.e. routine activities of everyday living).¹²⁸ See discussion below for

¹²⁸ *Analysis and comments to the Regulations*, Federal Register, Vol 71, no 156, Page 466661 (August 14, 2006)

further analysis.¹²⁹ The discussion points out that the evaluation procedures used to measure a child's functional skills must meet the same standards as all other evaluation procedures, consistent with §300.304(c)(1).¹³⁰

Whether Parents requested a functional skills evaluation, or dismissed the idea of a functional skills evaluation, does not change the District's obligations to comply with the IDEA requirements for an IEP. Student was re-evaluated in this area and that evaluation was completed by [REDACTED] on December 19, 2106, The evaluation states that Student's strengths are putting on her coat with cues, toileting independently, putting on shoes (on wrong foot occasionally) and drinking from a straw.

The Hearing Officer must determine whether the IEP was reasonably calculated to enable a child to receive an educational benefit. That determination is based on whether the District's IEP for Student identified her needs/eligibility and offered services to address those needs as required by statute. In this case, the Hearing Officer must decide whether Student's IEP was reasonably calculated to meet the *Endrew* standard. Student's unique needs, even at the 5th grade level, may be substantially different from the needs of same-aged peers.

There was no procedural challenge. To determine whether the District complied with the substantive component of a legally sufficient IEP, the District must show that Student's IEP identified Student's needs/eligibility and offered services to address those needs as required by statute. Parents have stated that the District has failed to appropriately assess Student's functional needs and provide an appropriate IEP with measurable goals and sufficiently related services.

¹²⁹ It is not necessary to include a definition of "functional" in these regulations because we believe it is a term that is generally understood to refer to skills or activities that are not considered academic or related to a child's academic achievement. Instead, "functional" is often used in the context of routine activities of everyday living. We do not believe it is necessary to include examples of functional skills in the regulations because the range of functional skills is as varied as the individual needs of children with disabilities. We also decline to include examples of how functional skills are measured, because this is a decision that is best left to public agencies, based on the needs of their children.

¹³⁰ *Id.*

The District's January 9, 2017 IEP does contain a goals for independent functioning to be delivered weekly by the occupational therapist. The specified goals build on already existing goals - putting shoes on correct foot, managing the zipper on Student's coat, managing all lunch containers. These goals appear to be based on the teachers' observations of what Student needs to be functional in the education setting.

The evidence shows that [REDACTED] and [REDACTED] talked with Parents in June of 2016 regarding expanding functional goals, and Parents declined, choosing to focus on academics. In the absence of evidence otherwise, and especially in light of Student being able to water ski and ride a bike, it was reasonable to believe that basic functional home activities, such as brushing hair and teeth and putting on clothing, were being accomplished by Student and that these activities did not need to be addressed in the IEP. Moving forward, it is clear that Student's school and Parents need to have an honest discussion regarding Student's abilities and Student's possible need for an expanded functional curriculum. Based upon my review and the legal standard of preponderance of the evidence, I find that the Functional component of the IEP met the requirements of 34 CFR §300.320(a)(2) and that the preponderance of the evidence favors the District.

C. The District failed to provide a 1:1 aide for Student.

I have already found in favor of the Student on this issue. See above.

D. The District failed to accurately report Student's present levels of academic achievement and performance pursuant to 34 C.F.R. §300.320(a)(1).

Parents assert in support of this claim that parts of the January 9, 2017 IEP were not accurate at the time the document was created because sections were copied and pasted from previous IEPs. *Schaffer v. Weast*, 546 U.S. 49 (2005) states the burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief. This hearing officer could find no evidence presented that the District had included out-of-date levels

of performance in this IEP. Also, Parents' closing argument does not specify any testimony or evidence in support of this issue, and speaks only in generalities. I therefore find by a preponderance of the evidence that the District did accurately report Student's present levels of performance.

F. In that it, including, but not limited to the January 9, 2017 BIP, failed to appropriately address Student's behavior and/or other social/emotional needs.

Parent's assert that parts of the January 9, 2017 BIP failed to appropriately address Student's behavior and/or other social/emotional needs. The testimony of District witnesses indicated that Student's behavior was improving. Parent's questioned whether this behavior improvement was due to the filing of the due process complaint. The testimony makes clear that Student's behaviors in the classroom were partially in response to Student's home and school environment. Following the loss of a grandparent and absence of Student's mother in the Spring of 2016, Student's behaviors increased. Those behaviors continued into the 2016-17 school year, when [REDACTED] was not present due to maternity leave. She returned on January 9, 2017.

[REDACTED] has monitored Student's behavior on a chart and has voluntarily provided almost daily information on Student's activities and behavior to Parents in the form of a journal. Credible testimony and evidence has shown that the Student's behaviors appear to be appropriately addressed in the BIP.

Parents argue that the Social/emotional needs of Student are not being met by [REDACTED]. The Student is in the Parent preferred program. The program is not geared toward females with cognitive functioning below her peers. Parents were aware of this when the program was selected. I therefore find by a preponderance of the evidence that the District did appropriately address Student's behavior and social/emotional needs within the constraints of the program selected by the Parents.

IV. Whether Student's continuing placement at [REDACTED] is inappropriate due to Student's failure to make expected progress on Student's IEP goals and/or Student's failure to receive academic or social benefits.

In support of this claim, Parents point to the September 2016 IEP, which indicates that Student was not completing any work in math or English. Student's failure to complete classroom assignments in math and English, however, is not the standard for determining whether Student is making progress on Student's IEP goals. Additionally, Student's lack of progress in math may be directly attributable to the summer vacation and the CASSI program. No testimony was presented that, during the CASSI program, Parents worked with Student to reinforce those math concepts Student had already learned. The evidence shows that if Student is not subjected to reinforcements and repetitions of material, regression may occur. This was the basis for ESY services in the summer of 2016.

Parent's also argue that there was no academic progress between the [REDACTED] testing and the [REDACTED] testing. However, the [REDACTED] testing did not translate the findings into age ranges, and the [REDACTED] finding showed an age range of late 3-years-old and it has been acknowledged that testing in the same general range from year to year merely indicates that similar progress is being made by same age peers.

The testimony at hearing revealed that some progress was made by Student. [REDACTED] and [REDACTED] testified that Student was making progress on the Speech goals. Additionally, [REDACTED]'s testing provided to [REDACTED] showed an age equivalence of 6 years, 7 months. This shows progress in the area of speech and language. Also, testimony is clear that Student was making progress on her behavior goals, on her occupational therapy goals, writing goals and math goals. The January 2017 IEP for math notes that student was successful in meeting her math benchmarks from her previous IEP. All told, the evidence at hearing shows that Student was making progress on her academic goals. I have already address the social goals, which are limited by Parent's choice of

classrooms at [REDACTED]. I therefore find by a preponderance of the evidence that the Student did make progress and that the placement at [REDACTED] was appropriate.

V. Whether the District denied a free appropriate public education to Student by failing to consider fully the results of the Neuropsychological Evaluation completed by [REDACTED] Center.

The only evidence Parents offer in support of this claim is that [REDACTED] the [REDACTED] Psychologist, failed to mention the [REDACTED] neuropsychological report in her report. At the time of [REDACTED]' re-evaluation of Student, [REDACTED] had access to the Rush report of November 2016. The [REDACTED] report refers to the [REDACTED] report and updates the [REDACTED] results with current testing and results. There is a comparison between the [REDACTED] testing and the [REDACTED] testing included in the [REDACTED] Report. IDEA does not require that all outside evaluations, even those that have been previously considered in the drafting of the IEP, be reviewed when a Student is re-evaluated. It was reasonable for [REDACTED] to rely on the most current information available when drafting the re-evaluation.

It is clear that [REDACTED] did consider the full Rush report and recommendations. [REDACTED] testified that she did consider the [REDACTED] report and referenced the report several times in her report. Also, [REDACTED] was present at the IEP meeting on January 9, 2017 and presented her report, based in part on the [REDACTED] findings and recommendations of [REDACTED]. The IEP team members considered [REDACTED] report. I find that, by a preponderance of the evidence, the District has shown that it did consider the [REDACTED] report and through that report the [REDACTED] clinic report.

VI. Whether from January 15, 2015 to the date of hearing, the District denied Student a Free appropriate public education by failing to meet each of her educational and functional needs resulting from her disability pursuant to 34 CFR §300.320(a)(4):

A. Whether Student requires lessons presented in a highly structured manner with consistent pre-teaching and repetition because of her impaired processing speed.

The testimony was credible that Student does need to have consistent repetition in a highly structured manner to make progress, and that she receives such repetitious instruction. [REDACTED] credibly testified that the DTTC program provided by the CASSI summer program lead to Student beginning to stutter, so she discontinued the program. [REDACTED] testified to using repetitions in an effort to follow the CASSI results. [REDACTED] testified to implementing consistent repetition with Student in all areas and using a reading program that would teach the same topic for one week.

B. Whether Student required a 1:1 aide because of her decreased adaptive functioning and language skills.

As previously found, this Student is in need of a 1:1 aide due to her decreased adaptive functioning, language and academic skills. This Hearing Officer was not convinced that Student would become overly dependent on a well-trained aide who knew how to assist Student in gaining these skills.

C. Whether Student requires adaptive skills training and IEP goals to address the need for adaptive skills training.

The Parents' witnesses [REDACTED] and [REDACTED] recommended Student receive adaptive skills training. Parents did not present any definition of adaptive skills training or cite any statutes or regulations regarding the inclusion of adaptive skills in an IEP. The mere mention of a recommendation in a psychologist's report does not translate to it being appropriate for or included in an IEP.

D. Whether Student's therapeutic school placement should include peers of similar functional and/or developmental levels allowing Student the opportunity to form peer relationships.

The original [REDACTED] report notes that Student is having socialization issues. Parents selected a program where they knew socialization would be substantially reduced, if not

impossible. This was an informed decision and required Parents to talk to [REDACTED] prior to enrolling Student. This was the Parent's choice, not the Districts. [REDACTED] was attempting to accommodate Parents' requests. [REDACTED] testified that there are other programs where Student would have access to female students, such as art, recess and lunch.

E. Whether Student requires life-skills training/instruction in activities of daily living integrated into her daily curriculum

See discussions above regarding functional skills and adaptive training skills.

VII. Whether the District considered the Student's progress/lack thereof, as measured by Student's benchmarks, progress monitoring data, evaluation data and other objective data, from January 25, 2015 up to and through the close of hearing, pursuant to 34 CFR §300.320(a)(2), therefore denying Student FAPE. Parents maintain Student had a lack of progress in the areas of:

- A. Receptive language;**
- B. Nonverbal reasoning;**
- C. Spatial visualization, pattern perception, matching and construction;**
- D. Nonverbal intelligence;**
- E. Math (including computational skills);**
- F. Letter and word recognition and spelling skills;**
- G. English language arts;**
- H. Behavioral goals;**
- I. Academic goals in reading writing math, science and social studies.**

The Parents assert that Student exhibited a lack of progress in all of the areas specified above. In support, Parent's point to the [REDACTED] report and the testimony of [REDACTED]. The [REDACTED] report provides scoring for a number of different tests completed by Student at [REDACTED]'s direction. The results of all but one of those tests show Student scoring below the first percentile. In the area of

nonverbal intelligence, Student scored below the fourth percentile. This is the same scoring range found in the [REDACTED] testing.

The CASSI report, however, noted that Student's scores between 2012 and 2016 suggest growth in the area of receptive language skills at the same rate as her peers. Also, it should be noted that the testimony from Parents, Experts, Psychologists, Social Worker, Teachers and others makes clear that no one knows what this Student is capable of achieving. [REDACTED] testified that Student will never be independent. [REDACTED] also pointed out that just because a person remains at a certain intellectual functioning level does not mean that they are not progressing. Student had scores in the less than one percentile range in the [REDACTED] testing, as she did in the [REDACTED] testing. Yet, Student, by the admission of the Parents, [REDACTED] and the witnesses at [REDACTED], has accomplished so much during the interim years. She has learned to count; can read and write; she is learning to talk; and she has learned to ride a bicycle and water ski. Student has also learned to put on her coat, use the toilet, and begin managing her lunch.

Parents testified that Student regressed in math, based upon their reading of the November 2015 IEP. But this argument was rebutted by the District's rebuttal witness [REDACTED], who explained the IEP math entries and Student's math abilities when transferring to [REDACTED]. And as already stated, the January 2017 IEP shows Student meeting her math goals.

The Parent's additionally claim that Student's work sent home from school does not show progress. It is clear that the Parents need some daily affirmation that Student is doing well in school, that they are frustrated by Student's lack of communication, and that they want some tangible evidence that Student is achieving academic success. However, the mere fact that Parents have not received this proof does not mean that Student is not making progress.

The burden is on Parents to prove that Student made no progress in these areas. After reviewing the evidence and testimony in this matter, I find that the Parents have failed to prove a lack of progress in all areas specified. I therefore find by a preponderance of the evidence that the District did accurately report Students present levels of performance.

Additional Claim of Parental Hostility:

Although not a certified issue, Parents argued at closing that because of their alleged “distrust” of JCFS, Parent’s cite *Bd. Of Educ. Consol. Sch. Dist., No 21 v. Ill. Bd of Educ.*, 938 F2nd 712, 18 IDELR 43, p 6 (7th Cir. 1991), which held that it was permissible to consider the “vehement” parental hostility to an IEP, and the school that proposed the IEP, as part of the placement decision for the Student. The appellate court stated, however, that “our ruling does nothing to alter the ability of hearing officers to make credibility determinations in the first instance. Hearing officers are best positioned to assess whether a family’s hostility is manufactured or whether parental attitudes pose a real threat to the success of the proposed IEP.” *Sch. Dist. No 21*, 18 IDELR 43, at p.5.

Parents in this case clearly love Student and want the Student to reach her full potential, whatever that may be. They have hired private psychologists and experts. They have participated in discussions with other families of GAND children, and cooperated with Doctors studying this rare genetic disorder. They have disrupted their family to attend private intensive summer camps. I recognize that they are frustrated with the process and frustrated by what they perceive as a lack of progress. However, it was clear in this case that despite their demands on the teachers and staff at [REDACTED], that everyone at [REDACTED] involved with the education of this Student is cooperating with Parents and trying to help Student attain her IEP goals. I do not believe that the Parents’ hostility is manufactured. Frustration often leads to hostility. However, I also do not believe that parental attitudes pose a real threat to the Student’s success at [REDACTED] or [REDACTED] ability to implement Student’s IEP.

REMEDIES

Parent’s have requested the following remedies in order to address any finding that Student was denied a free appropriate public education in violation of IDEA. I would like to address some of these requests:

1. An order that the District's placement for the Student, for the remainder of the 2016-17 school year be at a therapeutic day school that is appropriate for the Student's cognitive and social levels and addresses the Student's academic, functional, social and related service needs, such as [REDACTED] School with a one-to-one aide and transportation to and from school. This remedy is moot.
2. An order that the District's placement for the Student, for the 2017-18 school year be at a therapeutic day school that is appropriate for the Student's cognitive and social levels and addresses the Student's academic, functional, social and related service needs, such as [REDACTED] School with a one-to-one aide and transportation to and from school.

Although I have found that there was a violation of FAPE in the District's failure to provide the Student with a one-to-one aide from the period of January 9, 2017 through the close of the school year, I have also determined that the Parent's have failed to present sufficient factual evidence to me to show that [REDACTED] school would be an proper placement.

Parent's witnesses use the reference "such as" when suggesting [REDACTED]. Parents did not talk to administration at [REDACTED] to determine what programs are currently available, if Student's IEP could be implemented, and if [REDACTED] had a space available in that program. They base their desire for [REDACTED] on their familiarity Sunday school program, which is not part of and has no relationship to the therapeutic day school program. Additionally, Parents failed to show any evidence that Student would have the opportunity to be educated with students of similar cognitive ability. In the absence of this evidence I will not order that Student be placed at [REDACTED].

I have found that, despite Parent's allegations to the contrary, Student has become comfortable with [REDACTED] and with the teachers at [REDACTED], and is now making progress at [REDACTED] and would obtain additional benefit from a one-to-one aide.

ORDER

1. That for the denial of FAPE for the failure to provide Student with a one-to-one aide beginning on January 9, 2017 up to and including the final day of school for the 2016-2017 school year, I order that the District and [REDACTED] convene an IEP meeting within 30 days from today's date to revise Student's IEP to provide for a one-to-one aide for the 2017-2018 school year.
2. On or before August 10, 2017, the [REDACTED] shall submit proof of compliance to:

Illinois State Board of Education
Program Compliance Division
100 N. First St.
Springfield, IL 62777-0001

NOTICE OF RIGHT TO REQUEST CLARIFICATION

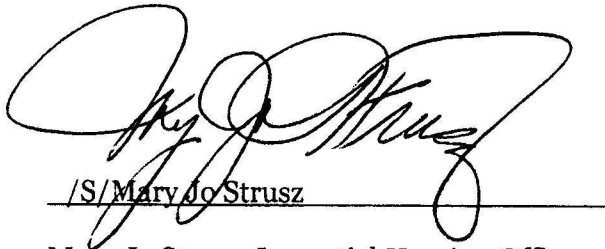
Pursuant to 105 ILCS 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street., Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in

any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within on hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: June 24, 2017



/s/ Mary Jo Strusz

Mary Jo Strusz, Impartial Hearing Officer

[REDACTED]

[REDACTED]

[REDACTED]