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AUG 14 2017

SPECIAL EDUCATION SERVICES

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]]	
Student,]	
]	CASE NO. 2017-0391
v.]	
[REDACTED]]	MARY SCHWARTZ
[REDACTED]]	Impartial Hearing Officer
]	
Local School District.]	

FINAL DECISION AND ORDER

JURISDICTION

The undersigned hearing officer has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*, and her appointment as hearing officer by the Illinois State Board of Education (ISBE) on April 26, 2017.

PROCEDURAL BACKGROUND

On April 21, 2017, the parent filed a due process request, which included a request for an independent educational evaluation (IEE) at public expense as one remedy. The district filed its own hearing request that same day, to contest the parent's IEE request. The parent and student are represented by [REDACTED] of [REDACTED] and [REDACTED] who is with the [REDACTED]. The district is represented by [REDACTED] and [REDACTED], who are with the district's due process department.

The Illinois State Board of Education (ISBE) appointed the undersigned as hearing officer in this matter on April 26th. The undersigned issued several preliminary orders on April 26th including a statement of the parties' rights in these proceedings, and held an initial status conference with parties' counsel on May 1st. The parties engaged in informal settlement negotiations, including an exchange of settlement offers, but were unable to reach an agreement. The prehearing conference was held by telephone conference call on June 1st.

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The district proposed several stipulations at the start of the hearing, which are included in the record. The parent then proposed some revisions. After considering that request, the district withdrew its proposed stipulations.

The district provided court reporters from Toomey Reporting throughout the hearing. No transcript was issued prior to the date of this decision; therefore, the testimony referenced below is based on the undersigned's hearing notes and memory. In rendering this decision, the undersigned has considered all documents entered into evidence at the hearing, testimony by parties' witnesses, the parties' closing arguments and their suggested case law, as well as independent research. This decision is issued within ten days after the hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(h).

ISSUES AND REQUESTED REMEDIES

The parent's April 21st complaint raises the following issues and requests the remedies below for the alleged denial of the student's right to receive a free appropriate public education:

1. Whether the district failed to conduct comprehensive evaluations of the student's educational impairments from April 21, 2015 through the present;
2. Whether the student received speech/language services, or any other special education services and/or related services, of appropriate scope and intensity from April 21, 2015 through the present;
3. Whether the student requires transportation with a heated/air conditioned bus due to her physician's recommendation for such, based on a diagnosis of moderate persistent asthma; and,
4. Whether the above-alleged violations denied the student a free appropriate public education (FAPE) separately and/or together.

As remedies for the above-alleged violations of the student's right to receive a FAPE, the parent requests an Order directing the district to:

1. Reimburse the parent for the costs of the speech/language and central auditory processing evaluations;

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2. Provide independent educational evaluations required to determine the student's special education needs;
3. Reimburse the parent for out-of-pocket expenses she incurred for transportation during the period that bus service was terminated;
4. Provide special education and related services, including speech/language therapy, as recommended by the independent evaluators;
5. Provide compensatory education as recommended by the independent evaluators; and,
6. Attorney fees and costs.

The district has one issue for hearing: whether it conducted comprehensive, appropriate evaluations that assessed the student in all areas of suspected disability. The district requests an Order finding that it appropriately evaluated the student and provided her a FAPE throughout the relevant time period.

FINDINGS OF FACT

After considering all the testimonial and documentary evidence entered at hearing, as well as both parties' arguments, the undersigned makes the following factual determinations:

1. The student, who is currently seven years old, lives with her mother and her one-year old brother. Testimony, Mother. Her maternal uncle and his daughter also live in the household. *Id.* The student has had asthma since birth and gets a lot of colds. *Id.* PD 4. She receives all her medical services at [REDACTED] Hospital ([REDACTED]) and the [REDACTED] Hospital. *Id.*
2. There is a significant history of asthma and speech disorders and delays in the student's family. Testimony, Maternal Grandmother; [REDACTED] May 5, 2014 Evaluation, PD 237.
3. In the 2013-14 school year, [REDACTED] attended preschool at her neighborhood public school. PD 4. The parent requested an evaluation in October 2013,

and the district held a 504 Eligibility meeting on November 19, 2013 to discuss the student's needs related to her asthma. PD 1, 3. The 504 team found the student eligible for 504 services and developed an Asthma Action Plan (AAP), which required transportation as a related service. PD 3-7.

4. The parent became concerned about "the student's lack of communication skills" and on April 7, 2014, asked the district to evaluate the student's speech/language skills. PD 10, 11; Testimony, Mother. The mother gave the school a letter from the student's physician requesting a full special education evaluation including "a full speech/language pathologist's assessment, an occupational therapy assessment, full cognitive testing, and complete academic testing." PD 292. A hand written notation on the letter states "concerns about speech delay." The student's teacher also reported that the student was difficult to understand. PD 11. The district agreed to assess the student's receptive and expressive language and articulation skills. PD 10, 15.
5. The district conducted a speech-language assessment on May 21, 2014, which included the Goldman Fristoe Test of Articulation (GFTA) and the Preschool Language Scale, 4th Edition (PLS4). PD 199, 200. The evaluator also observed the student in her classroom, interviewed her in the office, and assessed her oral motor skills and voice. PD 199. On the GFTA, the student had difficulty with /s/ blends, /l/ blends, and /r/ blends, and was stimutable for /s/ blends. *Id.* Based on her evaluation, the speech pathologist determined that the student's receptive and expressive language skills were within normal limits. PD 200.
6. The mother and district's IEP team met on June 11, 2014 for an eligibility meeting. PD 18. The IEP team adopted the non-eligibility findings of the May 21st assessment and recommended that the student be re-evaluated "in the future." PD 20. The meeting summary states that student was evaluated at [REDACTED] and that the parent was waiting to receive that evaluation report. *Id.*
7. The district held a 504 meeting on September 17, 2014, and found [REDACTED] eligible for 504 services based on her "moderate persistent" asthma and medical needs related to that. PD 26 - 28. The plan includes allowing the student to use her inhaler in specified situations. PD 29. It also requires transportation as a related service. PD 30. The plan was reviewed in October and includes transportation as a related service. PD 31-35. The bus must have air conditioning. PD 40.
8. [REDACTED] conducted a speech/language evaluation on May 5, 2014

pursuant to a request from the student's physician. PD 121. The evaluation included a full medical, developmental, and family history. Testimony, Ms. R. Both the maternal and paternal sides of the family have a history of speech/language disorders, and the mother reported that she had a hard time understanding [REDACTED] at times. PD 121; Testimony, Ms. R.

9. The evaluation used both formal and informal procedures to assess the student. PD 121. On the Goldman Fristoe 2 Test of Articulation (GF2 TA), the student received a standard score of 61, which indicates a severe speech sound disorder. Testimony, Ms. R. The student had not mastered sounds that she have at her age, and used sounds that she should not have been using at her age. *Id.* The student was also given the Oral and Written Language Scales-Second Edition (OWLS-2). PD 122. The student showed difficulty in receptive language; however, the evaluator noted that her scores "should be viewed as her minimum ability in this area" due the student's eagerness to name pictures. *Id.* The evaluator found that the student had a "severe speech sound disorder." PD 123; Testimony, Ms. R. While the student's expressive language skills were within normal range, her receptive language skills were below normal. *Id.* The receptive scores "were negatively impacted by (the student's) eagerness, and may be lower than her true ability in this area." PD 122, 123. Based on her findings, the evaluator recommended that the student receive speech-language therapy at school "to increase her speech sound production and intelligibility." PD 123. She also recommended that the school speech pathologist monitor the student's receptive language skills. *Id.*
10. The [REDACTED] speech/language evaluation report was printed on June 17, 2014. PD 239; Testimony, Mother. The parent then set up a meeting with the district and gave the report to the district. Testimony, Mother. The report is included in the district's IMPACT database and is part of the student's educational record. Testimony, Ms. H. There is nothing in the record that indicates when the evaluation was entered into the database.
11. The student began attending kindergarten at a charter school in her neighborhood in the 2015-16 school year. PD 36. On September 22, 2015, the school held a 504 eligibility meeting and determined that the student was eligible for 504 services based on medical needs related to her asthma. PD 36, 37. The 504 Plan includes transportation as a related service and specifies that a bus with air conditioning is required. PD 40; Testimony, EM. The mother and grandmother attended the meeting. *Id.* The team also updated the student's AAP. PD 39.
12. On January 12, 2016, the mother again asked the district to assess the student's speech/language needs. PD 44. That same day, the school's

speech/language pathologist conducted an informal screening of the student, and the school team held an assessment planning meeting to determine the components of the evaluation. PD 43-46. The Notice of Conference shows that the meeting was held on January 12th at 2:00 p.m. PD 45. The mother was not informed of the meeting prior to the meeting and thus did not attend it. Testimony, Parent. She first learned of the meeting later that day, when the student brought the paperwork home in her book bag. *Id.*

13. The district IEP team, outside of the parent's presence and without her input, determined that the assessment would include: a record review; an observation of, and interview with, the student; an interview with the teacher; and, informal and formal assessments. PD 48. Although the January 12th paperwork indicates that the mother had provided consent for the evaluation, the record indicates otherwise. PD 49. She provided written consent on January 15, 2016. PD 50.
14. The district held an eligibility meeting on April 5, 2016, which both the mother and grandmother attended. PD 53. The mother had talked with the speech pathologist before the meeting and informed her of the student's previous speech evaluations. Testimony, Parent.
15. The district's speech/language evaluation consisted of a classroom observation, interview with the student, an oral motor assessment, and the GFTA-2. PD 240-244. The evaluator determined that the student had normal oral structures and that her voice and resonance were within normal limits. PD 240, 241. On the GFTA-2, which assesses articulation and phonology, the student received a standard score of 106 and a percentile ranking of 42. PD 241. Based on those scores, the evaluator determined that receptive and expressive language assessments were "not warranted at the present time." *Id.* She did find that [REDACTED]'s articulation problem, "unintelligible speech," adversely impacted her ability to participate in group discussions and curriculum-based activities. PD 241.
16. The school nurse reviewed the student's health history, including [REDACTED] health records, and her then-current health status. PD 250-253. The student was prescribed daily medications: an inhaler twice/day and Flonase nose spray once/day. PD 251. She also used a nebulizer when the inhaler was not effective. *Id.* As of the meeting date, she was being followed at [REDACTED] for an ear pain and had been referred for hearing testing. PD 253.
17. The supervisor of the school's instructional program, who also served as the district representative at IEP meetings, did not review the student's cumulative file prior to the April 5th meeting. Testimony, Ms. EM. She also

did not recall seeing the March 2014 [REDACTED] physician's request, which asked the district to conduct a "full special education evaluation, including (but not limited to) a full speech/language pathologist's assessment, an occupational therapy assessment, full cognitive testing, and complete academic testing" or the May 5, 2014 LaRabida speech-language evaluation. PD 121-123, 292; *Id.*

18. After reviewing the district's assessment information, the IEP team determined that the student was eligible for speech/language services "to address mild articulation deficits." PD 56.
19. The IEP team then developed the student's IEP. The teacher reported that [REDACTED] was "inconsistently intelligible" and had "some difficulty with building positive relationships" with peers. PD 310. The IEP has one speech goal: "improve articulation so that her intelligibility will be rated by the clinician to be within 80% to 100% during structured conversation with minimum verbal and visual cueing." PD 318. The IEP requires 20 minutes/week of direct speech services. PD 320. The AAP provides for use of an inhaler during the school day. PD 315. The IEP requires bus transportation, with air conditioning, as a related service. PD 324.
20. The speech therapist who had implemented the April 2016 IEP described [REDACTED] as "very receptive, very pleasant, very talkative" and responsive to necessary redirections. Testimony, Ms. H. [REDACTED] did not have a regular speech/language therapy time, but the speech pathologist "usually" saw her on Thursdays. *Id.* The services were provided with one other student who had a similar speech goal. *Id.*
21. The school uses two standardized assessments for measuring student progress: the NWEA, which is given three times/year; and Fontas & Pinell, which is done weekly to assess reading and math fact fluency. Testimony, Ms. BC. The NWEA is taken on a computer, and a student wears headphones to aurally access the assessment. *Id.* The student's NWEA math scores in kindergarten were: fall 131, 27thile; winter 141, 23rdile; and spring 151, 28thile. PD 133. Her NWEA reading scores for that year were: fall 143, 56thile; 157, 67thile; and 163, 65thile. PD 133. Her first grade NWEA math scores show an increase: fall 165, 58thile; and winter 165, 25thile. However, her first grade NWEA reading scores show a decline in spring: fall 166, 66thile; and winter 161, 22ndile. PD 133. The student's first grade teacher reported that the NWEA tests were a "very, very strong" indicator of a student's performance; however, she thought that [REDACTED]'s scores were impacted by varying attention, copying from others, time limited tests, and just "getting sick of doing it." Testimony, Ms. BC. She also testified that the NWEA tested skills that the students might not yet have been taught. *Id.*

22. Fontas & Pinell is an assessment based on mastery of grade level standards. Testimony, *Id.* It is not a standardized assessment and has no relationship to grades. *Id.* In first grade, [REDACTED] was at 65% on this assessment and was below in math and reading. *Id.*
23. The student's academic grades in first grade (by quarter) were: math - U 54%; U 64%; N 65%, U 59%; Language Arts - S 82%; S 79%, S 88%, S 80%; and reading - S 77%; N 67%, S 76%, N 72%. PD 142, 143. Her non-academic grades, e.g. art, music, computer, gym, were almost all 100%. *Id.* The teacher was unable to explain why [REDACTED]'s academic grades were so low. Testimony, Ms. BC. She did say that [REDACTED] was distracted a lot and tried to "fake it until she made it" because she did not want to appear as though she needed help. *Id.*
24. The student's next IEP meeting was held on April 4, 2017. PD 64. The parent participated by telephone. *Id.* The IEP identifies [REDACTED]'s strengths as: responsible leader; gets along well with peers, teachers, staff; able to maintain focus during learning tasks; very fluent reader, at Level J, able to comprehend various grade level texts; knows all of her sight words; "excellent social pragmatic and functional skills that allow her to independently access the academic curriculum." PD 66. Her NWEA scores were 161 in reading and 165 in math. *Id.* She had an interdental lisp, which resulted in incorrect production of ch, sh, and j sounds. *Id.* The team reviewed a March 21, 2017 physician's report, which diagnosed [REDACTED] with moderate persistent asthma. PD 67. The report states that transportation is necessary to prevent asthma attacks triggered by cold and hot weather. *Id.* The report identifies parent's concerns as difficulty understanding the student's speech at home and a concern that bus transportation would be stopped, which would lead to the student missing school in winter. *Id.*
25. The IEP reduced the student's speech/language minutes to 15 minutes/week direct service. PD 75. The IEP includes five minutes/quarter of consult services by the speech/language pathologist to the student's general education teacher. *Id.* As in the prior IEP, the speech/language goal addresses only articulation: the student "will correctly product the ch, sh, and j sounds independently in all positions of words sentence level with at least 3 verbal cues." PD 73. The IEP includes three speech/language accommodations and several health/medical accommodations for asthma. PD 69.
26. The district determined that [REDACTED] was no longer eligible for transportation as a related service. PD 78. The school nurse and parent dissented from that decision. PD 79. The nurse opined that it was in the best interest of [REDACTED]'s health to have bus transportation because if a person is "deprived of oxygen for several minutes, the person could suffer brain damage."

Testimony, Nurse. [REDACTED]'s physician has stated that she "needs" transportation, and the school nurse believed the doctor's recommendation should be followed for [REDACTED]'s "health and well-being." *Id.* Additionally, the nurse noted that the student lives on the bus route so pick-up would not be out of the way. *Id.*

27. An IEP report card was issued in April 2017. PD 108. It states that the student had met her articulation goal. PD 108, 109.
28. The student had an independent speech/language evaluation on May 5, 2017. PD 256. Dr. MJ has a private practice evaluating children and young adults with significant disabilities. Testimony, Dr. M.J. She has a Ph.D. from Northwestern University, with a specialization in augmentative communication and child language. PD 265. Her master's degree, also from Northwestern, was in speech and language pathology. *Id.* She is an adjunct faculty member at the University of Illinois, Chicago, and Oakton Community College, and a lecturer and clinical supervisor at Northwestern. PD 265, 266. She is a licensed speech language pathologist in Illinois and has a certificate of clinical competence from the American Speech Language Hearing Association. PD 269. She also has a Type 10 special education certificate in Illinois. *Id.*
29. Dr. MJ reviewed several of the student's educational records, including IEPs and school evaluations, as well as reports from [REDACTED]. PD 256; Testimony, Dr. MJ. She also observed the student in her school program and spoke with the school's speech pathologist who provided services to [REDACTED] PD 262; Testimony, Dr. MJ. Dr. MJ found the student's functioning in the classroom "very impaired." *Id.* [REDACTED] had "great difficulty" with one activity, and the teacher had to provide her assistance twice. *Id.* She had trouble summarizing the main idea and "did not understand what she was supposed to do." *Id.* When Dr. MJ later spoke with the speech pathologist about her concerns, the speech pathologist reported that [REDACTED] was intelligible, had met her speech goal, and no longer needed speech services. *Id.*
30. In her review of the student's educational records, Dr. MJ noted that the GFTA, which the district had used in its initial evaluation of [REDACTED] in preschool, had been mis-scored, resulting in a higher score than that actually achieved by the student. Testimony, Dr. MJ; PD 233, 234. Additionally, the district administered an articulation assessment that [REDACTED] had just been given three weeks prior, which likely inflated her score. *Id.*
31. Dr. MJ's formal assessment included several standardized tests: the Peabody Picture Vocabulary Test IV-B (PPVT-IV B), the Expressive Vocabulary Test -2 (EVT), the Clinical Evaluation of Language Fundamentals 5 (CELF 5), the Test of Auditory Perceptual Skills -3 (TAPS-

- 3), the Sound Production and Pragmatic Language, and the LinguiSystems Articulation Test (LAT). PD 257-260.
32. On the PPVT-IV B, the student's single word receptive vocabulary was slightly below average, at the 14th %ile. PD 257. This test measures how a child understands words without context. Testimony, Dr. MJ. On the EVT, which tests the vocabulary the child uses, [REDACTED] achieved a higher score, at the 27th %ile. *Id.* This score is within the average range. PD 258.
33. The CELF 5 is a series of tests of fundamental parts of language, including core language, receptive and expressive language, and language content (semantics). Testimony, Dr. MJ; PD 258. This was the first time that [REDACTED]'s language skills had been assessed since she was four years old. Testimony, Dr. MJ. Although the student did get some scores in the average range, she also had scores that were "significantly below average." *Id.* Her knowledge of linguistic concepts was limited, and her knowledge of syntax was impaired both receptively and expressively. PD 258.
34. The TAPS-3 assesses three areas: discrimination (same/different), segment (cow-boy), and blending (putting sounds together to make a word). Testimony, Dr. MJ. [REDACTED] was unable to "reliably discriminate between two similar words" and, although her rote memory was in the average range, her ability "to apply memory strategies to longer or more complex material was very limited." PD 259. Although [REDACTED] could rotely repeat sentences on the TAPS, her auditory comprehension and reasoning were very impaired. Testimony, Dr. MJ. She cannot apply or understand inferential knowledge. *Id.* The student's intelligibility varies, and a listener compensates by filling in what is missing. *Id.* Her errors are "odd" and do not have a pattern. *Id.*
35. Based on her evaluation, Dr. MJ found that [REDACTED]'s "overall language functioning and use of language is impacted by reduced processing abilities, and lack of ability to recall lengthier or more complex language." PD 262. She diagnosed [REDACTED] with a language processing deficit and significant deficits with sound production skills. *Id.* She disagreed with the district's decision to terminate speech language services and recommended that [REDACTED] receive 90 minutes/week of speech language therapy, which should include both sound production and language. Testimony, Dr. MJ.
36. Dr. MJ also recommended that [REDACTED] receive compensatory speech services because the school had never provided services for her language deficit, which had been shown in her speech history and records. *Id.* She stressed the immediacy of these services, stating that by third grade, a child must have "intact language" and that if [REDACTED] had received proper services from

the district, she "would not be in the boat she is in." *Id.* She recommended an additional 30 minutes/week of services for an additional 50 sessions. PD 262.

37. To address the school's concern about missing classroom time to receive speech/language services, Dr. MJ recommended that one 30 minute session/week be delivered as push-in service, within the student's classroom, during reading, language arts, or social studies. Testimony, Dr. MJ. This would not disrupt [REDACTED]'s learning and would help "fix" her language deficit. *Id.*
38. Dr. MJ charged \$1,700.00 for her evaluation. PD 264.
39. [REDACTED] also had an independent central auditory processing (CAP) evaluation by Dr. F on May 23, 2017. PD 270-276. Dr. F has been a clinical audiologist since 1991. Testimony, Dr. F. She has a master's degree and a doctoral degree in audiology and has been in private practice since 1987. PD 279; Testimony, Dr. F. She is an adjunct faculty member at Northwestern, Northern Illinois University, and Rush University. *Id.*
40. A CAP evaluation assesses a person's hearing and middle ear functioning by "overworking" the system to see how efficiently it operates. Testimony, Dr. F. Although the tasks are simple, they are challenging auditorally. *Id.* During the testing, the person being evaluated sits in a booth with headphones on to eliminate extraneous noises. *Id.*; PD 270. All central auditory processes are in on of three areas: auditory discrimination, temporal processing (sequencing), and binaural processing (listen to something different in each ear). Testimony, Dr. F. The student needed "frequent clarification of most instructions" throughout the evaluation. PD 270.
41. [REDACTED] was given the following tests: Binaural Fusion Test, Dichotic Digits Test, Staggered Spondaic Word Test, and Pitch Patterns Sequence Test. PD 271. Based on her evaluation, Dr. F found that [REDACTED] has "adequate peripheral function for each ear; adequately developed auditory discrimination and temporal processing for age; and evidence of delayed binaural integration skills - associative deficit." *Id.* However, [REDACTED] does have a deficit in the left hemisphere, which results in poor ability to attach meaning to words. Testimony, Dr. F. This deficit has a "profound effect" on [REDACTED]'s ability to use language to learn. *Id.* She takes everything literally, and persons with this disability are often identified as slow learners. *Id.* It is a disability that can be remediated, and there are interventions that would be helpful. *Id.*
42. Dr. F recommended that [REDACTED] have a full case study evaluation, including

a psychological or neuropsychological evaluation using non-language based assessments such as the UNIT, Leiter Performance Inventory, C-TONI, or the WISC-V. PD 275; Testimony, Dr. F. The information that would be provided from this recommended assessment is necessary information for all students with this deficit. *Id.* Dr. F opined that if [REDACTED] does not get education for her language-based disability, she will fall "further and further behind as the demands increase" with the move from concrete to abstract language. Testimony, Dr. F.

43. Dr. F also made numerous educational recommendations to improve the student's language skills, including explicit, multisensory remediation programs, and accommodations and technology. PD 273-275. Dr. F charged \$650.00 for the evaluation, of which \$25.00 has been paid. PD 278.

44. The district's audiologist, Ms. M., reviewed Dr. F's evaluation report. Testimony, Ms. M. She also reviewed several related documents, including the May 5, 2014 [REDACTED] report, and district evaluations, IEPs, and reports. *Id.* She did not review Dr. MJ's report until after she had written her own report; therefore, she was unaware of the determination that the student has language deficits. *Id.* Based on her review, and after consultation with the district's senior audiologist, Ms. M. determined that [REDACTED] has a "central auditory associative deficit." Testimony, Ms. M.; PD 307. She suggested numerous accommodations and recommended that the IEP team "consider" a full case study evaluation. PD 307. Both district audiologists agreed with the findings in Dr. F's report. Testimony, Ms. M.

45. An IEP meeting was held on June 12, 2017, and counsel for each party attended the meeting. PD 82, 83. The school nurse was not invited to the meeting. Testimony, Nurse. The district had reviewed both independent evaluations prior to the meeting. Testimony, Ms. H. The district's audiologist who had reviewed Dr. F's report was not asked to attend the meeting nor was she asked to observe or evaluate the student. Testimony, Ms. M.

46. The IEP requires 30 minutes/week of speech/language services. PD 98, 102. A second speech goal was added "to address the concerns from the outside speech and communication evaluation ... in the area of syntax." PD 102. The IEP states that the goal would not last the "entire life of the IEP as this revision is being conducted in June." *Id.* The student's teacher did not think that increased speech services were necessary because she could understand the student and because the student would miss more classroom instruction. *Id.* Transportation was added to the IEP "for the life of this IEP." *Id.*

47. The parent agreed to excuse the nurse from attending the meeting "based

on [REDACTED] representation that bus service will be restored for full school year, based on [REDACTED] recommendation." PD 104.

48. The parent filed a dissent to the IEP after the meeting. PD 106. The dissent includes the following concerns: recommendations made by the independent audiologist are not included in the IEP; accommodations in the report by the district's audiologist are not included; the student's present level of performance is incorrectly identified as "very mild articulation disorder"; proposed remediation does not fully address the student's deficits; the speech goal mixes goals for improving syntax and auditory processing; no goals are included to address the language processing deficits and impairments identified by the independent evaluators; service minutes are insufficient and should be 90 minutes/week of direct service; consultation minutes are inadequate; compensatory speech language services are omitted; transportation is provided but does not include a requirement for air conditioning, as recommended by the student's doctor; the report from the district's audiologist was not made available until after the IEP was completed and thus her recommendation to consider a full case study evaluation was not discussed; and, the IEP does not address "the need for a multisensory, experiential instruction to improve deficient language skills" as recommended by the independent evaluators. PD 106, 107.
49. The district representative at the Spring 2017 IEP meetings for [REDACTED] reviewed the March 2017 doctor's order requesting transportation for the student. Testimony, Ms. SM.; PD 117. She found the order subjective because it states "transportation as needed" and thus disregarded the nurse's opinion because the doctor's note should be followed as written, i.e., "as needed." *Id.* She believed that nothing prevents the student from traveling the same as his peers. *Id.*
50. The district transportation guidelines for a student in a neighborhood school or a school of choice require that an IEP team "may decide that a student with disabilities needs transportation services only if documentation shows that **ONE OR MORE** of the following guiding principles is discussed and documented." SD 295 (emphasis in original). As relevant to this student, the guidelines include: the student has a physical condition and "has displayed significant limitations with endurance due to the physical condition ...when participating in P.E. or recess; the student "has a chronic or persistent medical condition and...requires limited exposure to environmental elements (e.g. extreme temperatures...) or "because of medical reasons is unable to safely walk to school." *Id.*
51. The parent provided receipts totaling \$24.61 for the days she took the

student to school via Uber. PD 336-342. One receipt has no date, so it is not considered in this calculation. She was unable to provide receipts for all the days she used Uber because her cell phone was broken so she was able to take a photograph. Testimony, Parent.

CONCLUSIONS OF LAW

The purpose of the IDEA is to ensure that all children with disabilities receive a free appropriate public education and related services "designed to meet their unique needs and prepare them for further education, employment and independent living." 20 U.S.C. §1400(d)(1)(A). A district must comply with both the IDEA's procedural requirements and substantive requirements in order to provide a free appropriate public education (FAPE) to a student. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176 (1982) ("Rowley"). To determine whether a student is eligible for IDEA special education and related services, a district must assess a student in all areas of suspected disability and must use a variety of assessment tools and strategies to gather "functional, developmental, and academic information." 20 U.S.C. § 1414(b)(2)(A). A district may not "use any single measure or assessment as the sole criterion for determining whether a child is child with a disability or determining an appropriate educational program for the child." 20 U.S.C. §1414(b)(2)(B). If a student is determined eligible, the school district must develop an individualized education program (IEP) for each student. 20 U.S.C. §1414(d). The IEP offered to the student must provide "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017) ("Andrew F.").

Based on the above factual findings, the parties' arguments, and the undersigned's own legal research, the hearing officer's legal conclusions are as follows:

I. Whether the district failed to conduct comprehensive evaluations of the student's educational impairments from April 21, 2015 through the present:

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A school district must use "a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent" to determine if the child has a disability. 20 U.S.C. §1414(b)(2)(A). A district may not use "a single measure or assessment as the sole criterion" for determining if a student is IDEA eligible. 20 U.S.C. §1414(b)(2)(B). The child must be assessed in all areas of suspected disability. 20 U.S.C. §1414(b)(3)(B). The evaluation must be "sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability in which the child has been classified." 34 C.F.R. §300.304(c)(6). The IEP team must review existing evaluation data, including evaluations and information provided by the parent. 34 C.F.R. §300.305(a)(1)(i).

The evidence shows that as of April 2015, the student's educational record included information about a significant family history of speech disorders and delays and a physician's request for a full special education evaluation, including a speech/language assessment, an occupational therapy assessment, and cognitive and academic testing. ¶4. The doctor's request includes a notation expressing concern about a speech delay. *Id.* [REDACTED] conducted a speech/language evaluation and issued a report on June 17, 2014. ¶10. The parent provided the report to the district, and the report is included in the student's educational record. *Id.*

The district did not conduct an evaluation until January 2016, after the mother again asked the district to assess [REDACTED]'s speech/language needs. ¶12. The district held an assessment planning meeting, at which it determined the parameters of the evaluation, without informing the parent of the meeting or seeking her input on the scope of the evaluation. ¶12,13. Prior to the April 5, 2016 eligibility meeting, the mother again informed the district of the [REDACTED] speech/language evaluation. ¶14. There is no evidence that the district reviewed or considered the [REDACTED] evaluation, which had found that the student had a severe speech sound disorder and below normal receptive language skills, as part of its evaluation.

The student's academic grades in first grade were low, and the teacher was unable to explain why, other than to say she was "distracted." ¶23. The student also scored below grade level on the district's standardized assessments. ¶ 21, 22. Despite that information, the district did not conduct further evaluations

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to determine whether the student had specific learning problems that might impact or explain her learning difficulties. An "appropriate education must begin with a full recognition of the disability and assessment of its extent." *Board of Education of Oak Park & River Forest High School v. ISBE*, 21 F. Supp. 2d 862, 29 IDELR 52 p.11 (N.D. Ill. 1998). The district here did not fully evaluate [REDACTED] and that failure resulted in IEPs that did not all of the student's special education needs.

The independent evaluations included comprehensive assessments in several areas and used a variety of reliable instruments to gather relevant information on the student's functioning. ¶31, 41. Both evaluators found deficits that impact the student's educational functioning and which the district had not evaluated. The speech-language assessment found that [REDACTED] has a language processing deficit and significant deficits with sound production skills. ¶ 35. The central auditory processing evaluation diagnosed the student with delayed binaural integration skills - an associative deficit that has a "profound effect" on the student's ability to use language to learn." ¶41. Additionally, Dr. F recommended a psychological or neuropsychological evaluation due to the left hemisphere deficit. ¶41, 42. The district's own audiologists, who had reviewed Dr. F.'s evaluation, agreed with Dr. F.'s her findings. Testimony, Ms.CM. Neither the reviewing audiologist nor her supervisor was invited to the June 2017 IEP meeting. *Id.*

Based on the foregoing evidence, the undersigned finds that the district failed to conduct evaluations that were sufficiently comprehensive to identify all of the student's educational needs and did not consider all available information.

II. Whether the student received speech/language services, or any other special education services and/or related services, of appropriate scope and intensity from April 21, 2015 through the present:

The student's April 16, IEP required 20 minutes/week of direct speech services to improve her articulation. ¶19. The April 4, 2017 IEP reduced those services to 15 minutes/week. ¶25. The independent speech/language evaluation diagnosed language deficits that had not been identified, and therefore not addressed in the student's related services, in the district's evaluation. ¶35. Additionally, Dr. MJ determined that [REDACTED] has "significant deficits with sound production skills." *Id.* This finding directly contradicts the district's assertion that the student's speech problem had been appropriately addressed and now requires fewer related service minutes. Since the district had not assessed the

student's central auditory processing, she did not receive any services for those disabilities.

The June 12, 2017 IEP increased the student's speech/language services to 30 minutes/week and added a goal to address syntax. ¶46. This addition of 10 minutes/week of service is insufficient to address the deficits identified in the independent evaluation.

III. Whether the student requires transportation with a heated/air conditioned bus due to her physician's recommendation for such, based on a diagnosis of moderate persistent asthma:

Both the student's physician and the district's school nurse have recommended that the student's IEP include bus transportation as a related service due to the student's asthma. ¶24, 26. The April 5, 2016 IEP required bus transportation, with air conditioning in warm weather, as a related service. ¶19. The district removed the bus transportation at the April 4, 2017 IEP meeting, over the school nurse's recommendation that the service be maintained. ¶ 24, 26. Notably, the school nurse was not invited to the next IEP meeting on June 12th. ¶45. However, counsel for each party was present, and transportation was added to the IEP "for the life of this IEP." ¶46.

The district's argument that the student does not meet the requirements in its transportation guidelines is based on a misinterpretation of what the guideline requires. The guidelines clearly state that a student must meet one or more of the enumerated principles in the guidelines. ¶49. The evidence shows that the student does meet the guideline that a student has a chronic or persistent medical condition and requires limited exposure to environmental elements, e.g. extreme cold. ¶26 "has a chronic or persistent medical condition and... because of medical reasons is unable to safely walk to school." *Id.*; ¶24. Based on this evidence, the undersigned finds that the student qualifies for transportation, including an air conditioned vehicle in hot weather, due to her asthma.

IV. Whether the forgoing failures denied the student a free appropriate public education (FAPE).

The IEP offered to the student must provide "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct.

988, 1001 (2017) ("Andrew F."). The adequacy of an IEP "turns on the unique circumstances of the child for whom it was created." *Id.* The evidence shows that the district did not fully evaluate the student's educational and related service needs and, therefore, it did not develop an IEP that met her needs and allowed her to make educational progress. ¶ 27-35; ¶41, 42. The district only evaluated the student for articulation and speech production problems and did not assess her language, auditory processing, or cognitive functioning. ¶19. This led to IEPs that addressed only articulation problems. *Id.* The independent evaluations identified significant deficits that impact the student's language problems and auditory processing, which impact her ability to learn and make educational progress. ¶35, 41, 42. Based on this evidence, the undersigned finds that the district failed to provide the student a FAPE during the relevant time period.

When a parent alleges a procedural violation of the IDEA, a hearing officer "may find that a child did not receive a free appropriate public education only if the procedural inadequacies... significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child." 20 U.S.C § 1415(f)(3)(E)(ii)(II). The IDEA emphasizes the importance of meaningful opportunities for parents to participate in educational decision-making, from the initial evaluation through the development of the IEP. See, 20 U.S.C. §1414; 20 U.S.C. §1415(b)(1). A parent has "enforceable rights in the entitlement" of a FAPE to her child, including the right to "participate in all meetings with respect to the development of an IEP." *Jackson v. Chicago Public Schools*, 70 IDELR 33, p. 3 (N.D. Ill., June 13, 2017) The parent in this case has actively sought help for the student by requesting evaluations and participating in each of the student's 504 or IEP and evaluation meetings, either in person or via telephone, since the student began attending school in the district. Despite its knowledge of such participation, the district held an assessment planning meeting without providing notice to the parent. ¶13. Additionally, the paperwork produced at that meeting indicates that the mother consented to the evaluation, despite the fact that she was not there. *Id.* Based on these facts, the undersigned finds that this procedural violation significantly impeded the mother's opportunity to participate in the decision making process for [REDACTED]

Compensatory education may be ordered as an equitable remedy to provide future educational services as compensation for a district's past failure to provide a student a FAPE. Burlington Sch. Comm. v. Massachusetts Dept. of Educ., 471 U.S. 359 (1985); Board of Educ. Of Oak Park & River Forest High Sch.

Dist. 200 v. Todd A. (Todd A.), 79 F.3d 654, 655 (7th Cir. 1996); Kevin T. v. Elmhurst Comm. Sch. Dist. 205, 2002 WL 33061 at 15 (N.D. Ill. 2002). Although the Seventh Circuit has not enunciated a standard for calculating compensatory education, both the Northern and Central Districts of Illinois have adopted the qualitative standard. Petrina W. v. City of Chicago Pub. Sch. Dist. 299, 53 IDELR 259 (N.D. 2009); T.G. v. Midland Sch. Dist. 7, 848 F. Supp.2d 902, 924-25 (C.D. Ill. 2012). The qualitative standard focuses on the student's unique needs, including the nature and extent of the student's disability and specialized educational needs, and the services required to place the student in the position she would have been in had the district provided a FAPE. Reid v. District of Columbia, 43 IDELR 32 (D.C. Cir. 2005). The district's failure to fully evaluate the student resulted in a failure to provide sufficient related services to address her language deficit. ¶36. The undersigned adopts Dr. MJ's recommendation of 50 compensatory sessions of 30 minutes/each as compensatory education. ¶37.

The parent has requested an independent educational evaluation (IEE) at public expense. After a determination that a district's re-evaluation is inappropriate, a student is entitled to an IEE at public expense as a matter of law. M.Z. v. Bethlehem Area School District, 60 IDELR 273, p.3 (3rd Cir. 2013).

ORDER

IT IS ORDERED THAT:

The district shall convene an IEP meeting within two weeks of the start of the 2017-18 school year to revise the student's IEP to include:

1. 90 minutes/week of speech/language services consistent with the recommendations of Dr. MJ. Of those minutes, one 30 minute session shall be provided as a push-in service within the student's classroom.
2. The district shall revise the student's speech/language goal to include specific goals to:
 - a. Improve syntactic language, semantic language, and higher level language skills;
 - b. Work on inferencing and identifying the main idea; and,
 - c. Address all the sound production errors the student has.
3. The district shall include in the IEP all the modifications and accommodations recommended by Dr. F in her report at pp. 274, 275.
4. The district shall include in the IEP all the accommodations and

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modifications made by the district's auditory processing specialist, Ms. M. in her report, PD. 307, 308.

5. The district shall provide 50 sessions of compensatory speech/ language therapy, 30 minutes/session with a provider selected by the parent in consultation with Dr. MJ. The district shall provide round trip transportation for the student and parent to the 50 sessions. The IEP shall document this compensatory education award.
6. The district shall provide an independent psychological/ neuropsychological evaluation consistent with Dr. F's recommendations at PD 273 by an evaluator selected by the parent, subject to state licensing requirements.¹
7. The district shall pay Dr. MJ \$1,700.00 for her evaluation and Dr. F \$650.00 for her evaluation.
8. The district shall reimburse the parent for transportation she provided after the student's bus service was terminated, as verified by receipts, for a total of \$24.61. PD 336-342.

Within 45 calendar days of receipt of this Order, the City of Chicago Public Schools District 299 shall submit proof of compliance to:

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

REQUEST FOR CLARIFICATION

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned-hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(ies) and the Illinois State Board of Education. After a decision is issued, the hearing officer may not make substantive changes to the decision. The right to request such 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.

¹ The parent's due process complaint includes an independent educational evaluation as a remedy. As the hearing officer understands 23 IAC §226.625(a)(2), the section applies to IEEs requested during the course of a hearing rather than as a remedy in a due process request.

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RIGHT TO APPEAL

This decision is binding on the parties unless a civil action is timely commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02a(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

ISSUED: August 14, 2017



Mary Schwartz
Impartial Hearing Officer



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Final Decision and Order was sent by certified mail prepaid and directed the individuals listed below:



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[REDACTED]

Mr. Andrew Eulass
Due Process Coordinator
Illinois State Board of Education
100 North First Street
Springfield, Illinois 6277-0001

before 6:00 p.m. on August 14, 2017

[REDACTED]

Mary Schwartz
Impartial Hearing Officer

[REDACTED]

Chart of Witnesses

- Ms. R - [REDACTED]
- Ms. H - [REDACTED]
- Ms. EM - [REDACTED]
- Nurse - Ms. [REDACTED]
- Dr. MJ - [REDACTED]

Dr. F - [REDACTED]
Ms. M - [REDACTED]
Ms. SM - [REDACTED]
Ms. C - [REDACTED]