

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

██████,  
Student,

v.

CITY OF CHICAGO PUBLIC  
SCHOOLS DISTRICT 299,  
Local School District.

CASE NO. 2018-0007

MARY SCHWARTZ  
Impartial Hearing Officer

**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 July 14, 2017.

**PROCEDURAL BACKGROUND**

The parents filed a due process request on July 11, 2017. The undersigned issued several preliminary orders on July 15<sup>th</sup>, including a statement of the parties' rights in these proceedings. An initial status conference was held on July 20<sup>th</sup>, and the prehearing conference was held on August 23<sup>rd</sup> by telephone conference call. The parents and student are represented by Charles Fox and Julie Welsh of the Law Offices of Charles P. Fox. The district is represented by Lucille Blackburn and Koga Ndikum-Moffor, who are with the district's due process department.

The district provided court reporters from McCorkle Litigation Services, Ltd. 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 close of the

**RECEIVED 12/19/2017 - SPECIAL EDUCATION SERVICES**

hearing record, as required by Illinois law. 105 ILCS 5/14-8.02a(g55)(5).

**ISSUES AND REQUESTED REMEDIES**

The parents' July 11<sup>th</sup> due process request raises the following issues for hearing:

1. Whether the district failed to accurately determine the student's disabilities that require special education services when it found him eligible as a student with an intellectual disability;
1. Whether the district failed to adequately consider the outside evaluations provided by the parents;
2. Whether the district failed to provide the student with a proper program (IEP) and placement to meet the student's educational and related service needs in school years 2015-16, 2016-17 and proposed 2017-18 IEP;
3. Whether the district failed to provide the student sufficient related services in:
  - a. Speech/language
  - b. Social work
4. Whether the district failed to provide appropriate ESY program/placement;
5. Whether the above-alleged failures denied the student a free appropriate public education (FAPE).

As remedies for the above-alleged denials of the student's right to a FAPE, the parents request an Order directing the district to:

1. Find the student eligible as a student with:
  - a. Learning disabilities;
  - b. Speech/language disorder; and,
  - c. Other health impairment;
2. Place the student at [REDACTED] School at district expense, including transportation, for as long as [REDACTED] School states he is making appropriate academic progress;

**RECEIVED 12/19/2017 - SPECIAL EDUCATION SERVICES**

3. Provide compensatory education in the form of:
  - a. Reimbursement to the parents for
    - i. Private testing they obtained;
    - ii. Summer instruction at Lindamood Bell or ██████ ESY;  
and,
  - b. Compensatory services, including:
    - i. Intensive reading instruction;
    - ii. Speech/language services; and,
    - iii. Social work services.

### **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 has a significant medical history that has impacted his development. He was diagnosed with tricuspid atresia (absence of traverse valve in the heart) *in utero* and had open heart surgery as an infant. SD 597, 598. He weighed four pounds, five ounces at birth and was on a NG tube until nine months of age. SD 597, 598. The student had early childhood developmental delays in motor and speech development and interacting with others. *Id.* He also has diagnoses of encopresis, obesity, and elevated liver enzymes. *Id.* He received early intervention services in speech, physical therapy, and play therapy. *Id.*
1. The student received early childhood services for students with mild cognitive impairments through a suburban school district. *Id.* SD 163. He began attending District 299 in first grade and was retained that year "due to attendance issues." *Id.* During the 2012-13 school year, he attended one of the district's accessible schools because of a medical restriction on walking up stairs. SD 1; Testimony, Ms. S. A district psychological evaluation conducted that year found him eligible for special education as a student with autism. *Id.*
2. The district re-evaluated the student in November 2014, when he was in fourth grade. SD 163. Mr. M., who is a bilingual school psychologist, conducted the psychological re-evaluation. Testimony, Mr. M. He administered the Kaufman Test of

Educational Achievement, 2<sup>nd</sup> Ed. (Brief Form) (KTEA-II) and reviewed the student's 2011 scores on the WIAT-III, which he had administered for the student's prior evaluation. Testimony, Mr. M.; SD 163, 164. On the KTEA-II, the student achieved standard scores of 63 in reading, 47 in math, 53 in writing, and 52 in brief achievement composite. *Id.* In math, the student "struggled with simple addition and subtraction math facts" could not read a calendar." SD 164. The reading standard score had declined since 2011, when the student's standard score on the WIAT-III's reading comprehension was 79. Testimony, Mr. M. In 2011, the student's cognitive abilities on the WIAT-III were "within the lower extreme," and his "overall adaptive behavior composite" was in the low range. SD 164, 165. Although the October domain meeting had determined that intelligence was "not a relevant domain," the school psychologist recommended a full intellectual and adaptive behavior assessment. SD 9, 165. He also recommended continued IDEA eligibility as a student with autism and other health impairment (OHI). SD 165.

3. An occupational therapy evaluation was completed on November 10, 2014. PD 602
4. The district held an eligibility determination and IEP meeting on December 10, 2014. SD 21-29; SD 118-153. The mother attended the meeting. SD 21. The IEP team reviewed the student's health, academic performance, social/emotional status, communication, and motor abilities. SD 23. His math computation skills were "considered average and a relative strength." *Id.* He lacked basic decoding skills in reading. *Id.* He was "able to communicate with peers and adults by using words and short phrases," and the current placement met his needs. *Id.* He had delays in receptive, expressive, and pragmatic language, including difficulty in answering questions and interacting appropriately with peers. SD 23, 24.
5. All of the eligibility determinant factors are marked yes, and the form states that if any answer is "yes", the student is not eligible for the disability under consideration. SD 25. Although the district determined the student was a student with autism and OHI, there is no discussion or documentation on how those determinations were reached and whether the disabilities adversely impacted his

education. SD 26, 28; Testimony, Ms. B.

6. At the IEP portion of the meeting, the team reviewed the required considerations for students diagnosed with autism and noted the following factors as relevant to this student: does not actively engage in conversation with peers and is unable to stay on topic; misunderstands interactions with peers and thinks they are trying to hurt him; often plays with small pieces of string, clay, or yarn when he is supposed to be listening or working. SD 121. The IEP requires a paraprofessional for academic subjects and gym, and a dedicated paraprofessional for independent functioning (toileting and hygiene in bathroom). SD 124.
  
7. The student's academic functioning was at a first to second grade level in all academic areas. SD 119. On curriculum based assessments, he read at a late first to second grade level but was unable to sound out unfamiliar words. *Id.* His comprehension was at a kindergarten level. *Id.* Despite these deficits, the IEP's present levels of academic achievement and functional performance (PLAAFP) for language arts state that the student "excels in reading and has a large bank of sight words." SD 130, 132. The math PLAAFP reports that his mind "easily wandered," and he required frequent redirection and prompting to complete his work. SD 134. He could identify single and most double digit numbers but struggled to identify numbers with three or more digits. SD 134. The student's functional performance was the same across all subjects: he was easily distracted, needs skills and concepts broken into incremental steps, required frequent redirections across all subjects. SD 130-141. He had "reduced" receptive, expressive, and pragmatic language skills compared to his same age peers and difficulty answering questions, describing events and actions, and interacting appropriately with peers and staff. SD 142, 144. He had difficulty reading social cues correctly, interrupted instruction and peer interactions, and struggled with listening comprehension. SD 146. The IEP requires numerous accommodations and modifications in all subjects and on assessments. SD 125-129. Required services include 30 minutes/week direct speech/ language services, 15 minutes/week direct social work services, and special education in all academic subjects. SD 148. The student was found eligible for extended school year services. SD 151. Transportation was included as a

related service. SD 153.

8. The parent requested a psychological re-evaluation, which Mr. M. conducted in March 2015. PD 590. The re-evaluation included a classroom observation and standardized assessments of the student's intellectual and adaptive functioning. PD 591-594. Mr. M. noted that the student had "low levels of energy or fatigue" and flat affect. PD 590. The Reynolds Intellectual Assessment Scales (RIAS) was used to assess the student's intellectual functioning. PD 591, 592. On the RIAS, the student achieved a nonverbal intelligence index score of 63 and a verbal intelligence score of less than 40. PD 591. These scores are significantly discrepant. Testimony, Mr. M. The RIAS is a verbally-based assessment, and a language impairment could impact a student's performance on the RIAS. *Id.* The student was also given the auditory working memory subtest of the Woodcock-Johnson III (W-J III) and achieved a standard score of 80 (mild impairment) on the W-JIII subtest. PD 592. The RIAS and W-JIII auditory working memory subtest measure different functions; therefore, there is no correlation between the student's scores on the RIAS and the W-J III auditory working memory subtest. Testimony, Mr. M. The student's adaptive behavior was assessed by having his mother and his teacher completed the Vineland Adaptive Behavior Scales, 2<sup>nd</sup> Edition. PD 593, 594. The teacher's ratings showed low standard scores in daily living skills in school and in socialization, moderately low scores in communication, and a low composite score of 65. PD 593. The mother's rating scores were low in all areas, resulting in a low composite score. *Id.* Based on his evaluation, Mr. M. recommended that the student receive special education services as a student with a mild intellectual disability and autism. PD 595.
9. The district held an eligibility meeting on March 21, 2015. SD 31. The social/emotional assessment summary was updated from the December meeting to include concerns about motivation and social skills, including difficulty reading social cues, misunderstanding peer interactions and intent, and a parental concern that the student was being bullied. SD 33. The RIAS results are summarized, reporting deficient verbal comprehension and perceptual reasoning, and below average auditory memory. The teacher's adaptive behavior assessment reported low independent

functioning and low functional communication. SD 33, 34. The student's eligibility was changed to include mild intellectual disability with his prior eligibilities of autism and OHI. SD 37.

10. An IEP meeting was held on March 31, 2015 and reconvened on April 14, 2015. SD 42, 80. The team considered factors relevant to the student's diagnosis of autism and determined that all of the considerations were relevant: communication, social interaction skills and proficiencies, unusual responses to sensory experience, needs resulting from resistance to change, needs resulting from engagement in repetitive activities, needs for positive behavioral strategies, and other needs resulting from the student's disability. SD 45, 46. A new accommodation of "small group instruction" was added for all academic classes. SD 88, 89. New accommodations and modifications for assessments include administering language arts assessments individually and allowing use of a calculator on math assessments. SD 92. There are no changes to the instructional goals or PLAAFPs. SD 102-111. The wording of speech/language goal is slightly different, and the criteria is increased from 8/10 to 9/10. SD 108; SD 144. The social/emotional goal is unchanged. The IEP requires 30 minutes/week of direct speech language therapy, and 15 minutes/week of social work services. SD 112. Fifteen minutes of consultation/week by the nurse to the paraprofessional is added. SD 112. The team determined that the student was eligible for ESY, and transportation remained as a required service. SD 115, 116. A re-evaluation by the school nurse, done on March 31, 2015 is included in the IEP and recommends nurse consult services. PD 432, 433. The recommendation was adopted, and the IEP includes 15 minutes/week of consultation with the special education teacher and the paraprofessional on the student's cardiac history, medication regime, and activity. SD 90, 91. A significantly modified curriculum is required in all academic subjects, including the use of off-grade level texts and supplemental materials SD 114.

11. The student's IEP was next revised on September 9, 2015 without a formal meeting. SD 234. The parent had provided a waiver of a formal meeting. *Id.* The document includes new information under developmental and functional needs, indicating that the mother requested that the student be reminded to use the bathroom three times/day. SD 236. Adult monitoring is required at lunch to

monitor nutrition and at recess, and the student was restricted from physical education until a cardiologist cleared him for that class. *Id.* Adult assistance is also required to monitor the pulse oximeter at specified times. *Id.* No changes were made to the student's related service minutes. SD 267.

12. The next IEP, dated October 20, 2015, states that the parent waived a formal meeting and was given/sent the document on November 2<sup>nd</sup>. SD 273. The IEP reports a shift in the parent's concerns from peer relationships to academic progress, curricular modifications, and grades. SD 277. A new accommodation/modification is added: modified curriculum for academic classes. SD 282-283. The PLAAFPs and goals are the same as in the prior IEP. SD 288-299. The significantly modified curriculum includes more detail than the prior IEP, noting that his reading fluency and vocabulary is between levels 2-5 while his comprehension is between grades 1-2. SD 307. He "understands concepts appropriate for a three year-old". SD 307. Eligibility for ESY and transportation is continued. SD 309, 310. There is no LRE grid sheet detailing service minutes; however, the Revision Summary does not indicate any change to related service minutes. SD 306, 311.
13. The mother noticed a change in the student's demeanor in February 2016 and met the assistant principal and the student's case manager to discuss her concerns. Testimony, Mother. They told her they would talk with the student and "not to worry." *Id.* In the spring of 2016, the student began to be afraid to use the bathroom at school because other students were making fun of him in the bathroom and banging on the stall doors. *Id.* He sometimes came home soiled because he had been afraid to use the bathroom. *Id.* The mother spoke with the student's physician, who referred her to a gastrointestinal specialist. *Id.*
14. The IEP team reconvened on March 8, 2016. SD 181. The IEP reports he was reading up to a 5<sup>th</sup> grade level; however, in an on-line reading comprehension assessment, he scored at a first grade level. SD 182. His reading comprehension level was pre-kindergarten to kindergarten, and he had "significant deficits" in vocabulary. Testimony, Ms. W. His curriculum was modified to a kindergarten/first grade level. SD 183. He was only graded on work that he completed. SD 183. His maturity level was "between

kindergarten and 1<sup>st</sup> grade.” *Id.* He could not complete math problems that had more than one step. SD 184. He required frequent redirection and prompting in class and as much 1:1 interaction as possible with the teacher. *Id.* New concerns are noted on the considerations for students with autism: needs resulting from resistance to environmental change and other needs resulting from his disability, noting that his social interactions were not always appropriate, and he had difficulty advocating for himself. SD 186. The IEP requires 30 minutes/week of speech-language services delivered in class and 20 minutes/week social work services, also delivered in class. SD 224.

15. The parent’s concerns about her son’s academic and social difficulties increased in the fall of 2016. Testimony, Mother. She reported that the student told her other students were calling him names. He was unable to focus and was worried and scared to go to school. *Id.* The mother memorialized her concerns in writing to the district on November 6, 2016 and also requested a functional behavioral assessment (FBA) to address the student’s difficulty responding to numerous social situations, including being called names, coping with stress, distinguishing between acceptable and unacceptable behavior, and social skills. PD 915A. She also emailed her request to the district on November 16<sup>th</sup>. PD 807.

16. In response to the parent’s concerns, the district developed a safety plan, which was implemented by the student’s paraprofessional, Mr. I. PD 911-915. Mr. I. was the student’s paraprofessional in 2015-16 and 2016-17. Testimony, Mr. I. The safety plan was implemented throughout the school day, from arrival to dismissal. PD 911-915. The student had difficulty understanding social situations and things his peers said. Testimony, Mr. I. He took things personally, which the other student might not have meant that way. *Id.* The paraprofessional also assisted in the classroom and with toileting as needed. *Id.* He took data on whether the student was on task and helped the student with his work by asking questions to ensure understanding and breaking down directions. *Id.*

17. The parent obtained a learning ability evaluation at Lindamood Bell Learning Center on December 5, 2016. PD 654. The evaluation found that the student is below the normal range in phonemic

awareness, symbol imagery, and concept imagery, which result in difficulties in reading, spelling, comprehension, and math. The center recommended daily instruction (four hours/day, five days/week) for an initial period of 600-800 hours. PD 654. The center also recommended additional instruction in math skills after the initial reading instruction was completed. *Id.* The parent paid \$295.00 for the evaluation. PD 1026.

18. On December 15, 2016, the district granted the parent's November 6<sup>th</sup> evaluation request and agreed to "assess areas that might be impacting (the student's) learning behaviors" and to "gather data through a Functional behavioral Assessment to determine if there is a need for a Behavior Intervention Plan." SD 570.

19. The parent began working with an educational advocate, Ms. B., in December 2016 due to her concerns about the student's lack of educational and social/emotional progress and being bullied at school. Testimony, Ms. B. Prior to her work as an educational advocate, Ms. B. was employed by the district for 13 years and had served as the coordinator of autism and intellectual disabilities, TBI, OHI and PHY for several years; thus, she is very familiar with the district's programs, policies, and procedures. *Id.*, PD 1035. She also was an autism specialist for 30 schools for five years and a teacher in the district's cluster program for two years. *Id.* The parent has paid the educational advocate \$2,320 for her services. PD 1084-1087.

20. The district held an assessment planning and IEP meeting on December 21, 2016, which the parent and her educational advocate attended. SD 345. The district identified health, social/emotional, general intelligence, academic performance, communication status, and motor abilities as relevant domains. SD 348, 349. The team agreed that the following was needed: updated cardiac information from the student's treating physician; information on the student's social/emotional status, including interviews with parent and student, student observation, social skills rating scales, and teacher interviews; updated academic information including classroom observation and standardized academic achievement assessment; a social/emotional survey; a formal speech/language assessment; and a sensory assessment. SD 348, 349. Ms. A., one of the district's school psychologists, also recommended a cognitive

assessment, but the mother did not consent. Testimony, Ms. A.

21. The student's eligibilities of mild intellectual impairment, autism, and OHI were maintained. SD 465. Although the IEP states that the student "reads up to the 5<sup>th</sup> grade level," he was in the 1<sup>st</sup> %ile in reading on the NWEA MAP assessment in fall 2012, spring 2015, and fall 2015 SD 468. He had difficulty initiating social interactions with peers and selected to do solitary activities instead. SD 469. Despite six years of school-based speech/language therapy, he struggled to answer "what" and "why" questions and frequently responded "using short utterances containing little detail." SD 470. All factors required to be considered for students with autism were found relevant except needing positive behavioral intervention. SD 470, 471. The IEP requires numerous accommodations and modifications for all academic classes, related services, physical education, computer, and for assessments. SD 478-484. The instructional goals include significantly more information in the PLAAFPs and report that he is at the 1<sup>st</sup> %ile in reading and math. SD 500-507. The student's related service minutes are the same as in the prior IEP. SD 509. A significantly modified curriculum is required in all academic areas. SD 511. Transportation is required. SD 514. A statement was added to the IEP, stating that the parent wanted "consistent information to practice skills at home." SD 472.
  
22. The district conducted an occupational therapy evaluation in January 2017. PD 567. It included a standardized assessment, interviews with the student and staff, a records review, and an observation of the student. *Id.* The Berry-Buktenica Test of Visual-Motor Integration was used to assess the student's visual-motor integration skills. PD 570. His overall visual-motor integration skills were in the below-average range, and his visual-perceptual skills and motor coordination were within the average range. *Id.* The evaluator recommended continued use of accommodations and modifications to address the visual-motor integration deficit. *Id.* The Sensory Profile School Companion 2 was used to assess the student's sensory processing abilities and their impact on the student's functional performance. *Id.* That assessment showed that the student is distracted by or sensitive to sensory input "in the visual section." PD 570, 571. The examiner recommended unspecified classroom accommodations and modifications and OT services to address fine motor/hand and sensory-related concerns.

PD 571. The school nurse reviewed the student's medical history and interviewed the mother and recommended continued school nursing services. PD 572, 573.

23. The social work re-evaluation was conducted during February 2017. PD 558. The evaluation consisted of a records review, interviews with teachers and student, rating scales, and a records review including a review of the independent neuropsychological evaluation. PD 558-562. The social worker scheduled an interview with the mother, but the mother did not attend. PD 560. Efforts to reschedule the interview were unsuccessful. *Id.* However, the parent did complete the Social Skills Improvement System (SSIS) rating scales. PD 561. The social worker was aware of the mother's concerns about bullying and the student's encopresis and diagnosis of anxiety disorder. Testimony, Ms. K. The social work report states that the parent's scores should be interpreted with caution because negative responses might be skewing the results. *Id.* The parent had reported concerns include bullying, encopresis, and the student's social misperceptions and lack of friendships. *Id.* The special education teacher also completed the SSIS scales, and the student's scores were within the average range on that assessment. PD 560, 562. Based on her assessment, the school social worker recommended continuation of in-school social/emotional support to address peer interactions, responding appropriately to social situations and recognizing social cues. PD 562.

24. Ms. R., the district's speech-language pathologist, has provided speech/language services to the student since September 2016. Testimony, Ms. R. His IEP requires 30 minutes/week of service. *Id.* She also conducted a re-evaluation of the student's speech/language functioning in February 2017. SD 594-596. Her evaluation included formal testing, a student interview, and classroom observation. *Id.* The student's voice, articulation, phonology, and oral motor functioning are all within normal limits. SD 595. He does not have any severe or significant speech issues. Testimony, Ms. R. However, he does have a significant language disorder, which impacts his pragmatic language and social functioning. *Id.* On the Comprehensive Assessment of Spoken Language (CASL), the student showed significant delays in receptive and expressive language. SD 595, 596; Testimony, Ms. R. Overall, she found that he has a "very significant language impairment." *Id.*

25. The district's psychological evaluation, conducted in February 2017, consisted of a records review including the district's past psychological evaluations, observations of the student, teacher interviews, and administration of the KTEA-3. PD 549-557; Testimony, Ms. A. The evaluation report notes the student's attendance problems over the years: 35 absences in the 2016-17 school year as of the date of the report, 40 absences in school year 2015-16, 12.5 absences in school year 2014-15, and 10 absences in school year 2013-14. PD 549. The student had been retained in first grade due to attendance issues. *Id.* The KTEA-3 is an academic achievement test. PD 551. Ms. A. did not know that the private neuropsychologist had administered the KTEA-3 to the student the week prior to her evaluation. Testimony, Ms. A. On the KTEA-3 administered by Ms. A., the student's academic skill performance was "commensurate with average performing students in middle 1<sup>st</sup> grade through early 3<sup>rd</sup> grade." PD 551. The student had "great difficulty" during the assessment with "language-laden, multiple steps, and/or critical thinking skills" during the assessment. *Id.* Although he had relative strengths in math computation and spelling, both scores were in the below average range. *Id.* He had "extreme difficulty with language-laden and critical thinking skills" in the reading comprehension, math concepts and applications, and written expression subtests. PD 551. Listening comprehension was "his greatest personal weakness," with a score below the .1%ile. *Id.* His academic composite score was also low, at the 1<sup>st</sup> %ile. *Id.* The student's adaptive behavior was also significantly lower than his age-based peers. *Id.* However, the KTEA-3 data might not have been valid because the student had just taken the assessment in another setting. Testimony, Ms. A.

26. Ms. A. also administered the GARS because of the student's autism eligibility and the mother's concern about autism. Testimony, Ms. A. The GARS, which is a survey, was given to the parent and two of the student's teachers. *Id.* The mother did not return the survey. *Id.* The teachers' scores indicated "probably to very likely" that the student has autism. *Id.* Although Ms. A. did not include the GARS data in her report, she testified that she disagreed with Dr. T.'s conclusion as to the GARS-3 and ADOS. Testimony, Ms. A. Based on her assessment and review of the district's past evaluations, Ms. A. found that the student has a mild

intellectual disability and autism. PD554. The report notes that the independent psychological evaluation reported “overall intellectual functioning in the Extremely Low range as assessed by the WISC-V (FSIQ-58, 0.3%ile)” with a low average score in fluid reasoning skills. *Id.*

27. The parent obtained an independent neuropsychological evaluation in February 2017, and the evaluation report was issued on March 6, 2017. PD 633. The evaluator, Dr. T., is neuropsychologist and clinical director at Rush Medical Center. Testimony, Dr. T. She has 20 years of experience in the field and has conducted over 1,000 evaluations. *Id.* The evaluation consisted of the formal tests, interviews with the parents, and a review of medical and educational records, including the student’s IEPs. *Id.* A doctoral practicum student assisted with the evaluation, and Dr. T. was present at all times the student was with the student. *Id.* The evaluation report was written by Dr. T. [REDACTED]. *Id.*

28. Dr. T. administered numerous assessments and obtained a detailed history to provide a comprehensive look at the student’s functioning and educational diagnoses. PD 633-635. The report notes his significant medical history and delayed developmental milestones, including delayed speaking. PD 634. The student had learned sign language due to his delayed speech. *Id.* The student was given the Conners’ Continuous Performance Test II (CPT II) to assess his attention skills. PD 636. The results found that he was distracted by his internal thoughts and had difficulty with verbal and visual scanning. *Id.*

29. Dr. T. used the Wechsler Intelligence Scale for Children, 5<sup>th</sup> Edition (WISC-V) and the Test of Nonverbal Intelligence, 4<sup>th</sup> Edition (TONI-4) to assess the student’s intellectual abilities. PD 637. On the WISC-V, the student’s full scale IQ was 58 (0.3%ile), and his subtest scores varied from mildly deficient to low average. *Id.* The WISC-V includes several domains: verbal comprehension index, visual spatial index, fluid reasoning index, processing speed index, and working memory index. PD 637, 637. The verbal comprehension and reasoning skills subtests, the student’s performance was within the mildly deficient range. *Id.* Dr. T. opined that his performance on this subtest was “likely influenced by his delayed speech and previous diagnosis of expressive and receptive

language disorders.” PD 637. The fluid reasoning index measures nonverbal intelligence, and the student scored in the low average range on this subtest. PD 637, 638.

30. Because of the student’s language difficulties, Dr. T. administered the TONI-4 to measure the student’s intellectual functioning separate from any language demands. PD 638. Based on his performance of the TONI-4, the student’s intellectual abilities are within the average range. *Id.* As stated in the report, “(w)hen taking away language and processing speed, (the student) is able to function in the average range.” *Id.*
31. The Kaufman Test of Educational Achievement, 3<sup>rd</sup> Edition (KTEA-3) was administered to assess the student’s academic abilities. PD 639. He had difficulty decoding words and performed at a 2<sup>nd</sup> grade level. *Id.* In math, he performed in the mildly deficient range, at a first grade level. *Id.* In written language, his overall abilities were below age/grade level expectations. *Id.* the Wechsler Individual Achievement Test-Third Edition (WIAT-III), Clinical Evaluation of Language Fundamentals-Fourth Edition (CELF-IV), and Test of Word Finding, Second Edition (TWF-II) were used to assess the student’s language skills. His language skills were within the low average range and “for the most part, not consistent with his Verbal and Nonverbal IQ scores.” PD 640. On the CELF-IV, all the student’s scores were low, showing a severe language impairment. Testimony, Dr. T. Because “language is the key to every aspect of life,” Dr. T. was very concerned about the student’s severe language deficit. *Id.* Dr. T. ■ cautioned that the student’s low KTEA-3 scores “cannot be errantly used as a proxy in extrapolating his overall potential and functional capabilities without consideration for other underlying neurocognitive impediments.” PD 644. Her evaluation found that the student has “cognitive capabilities that significantly supersede his measured full scale IQ but are likely hindered by specific and addressable underlying learning disorders.” *Id.* He performed in the average range on nonverbal tasks. *Id.* His academic performance is adversely impacted by his poor receptive and expressive language, processing speed, and learning disabilities in reading, written language, and math. *Id.* Based on the findings of her evaluation, Dr. T. stated that the student has not received the amount and type of educational services he needs. Testimony, Dr. T.

32. Dr. T. also assessed the student's social, emotional, and behavior functioning. She had the mother complete the Behavior Assessment System for Children, 3<sup>rd</sup> Edition (BASC-3), which is a behavior rating scale. PD 642. According to the mother's responses, the student demonstrated "clinically significant anxiety, depression, somatization, atypicality, withdrawal, adaptability, leadership skills, and functional communication skills." *Id.* The mother's responses were "within the caution range" and thus must be interpreted with caution. *Id.* The mother completed the Gilliam Autism Rating Scale, Third Edition (GARS-3). PD 553. Based on the mother's ratings, the student's autism index scores were 73. Dr. T. used the Autism Diagnostic Observation Schedule, Module 3 (ADOS, module 3). On the ADOS, module 3, the student "struggled" to make eye contact and look at the examiner, to have a back and forth conversation, and to communicate about emotions. PD 643. Although the student's scores on the ADOS were consistent with a diagnosis of autism, Dr. T. determined that based on all the information gathered in her evaluation, the student's "social functioning difficulties are better explained by his functioning difficulties in other areas, including language and developmental disabilities." *Id.* The independent evaluation found that the student has significant language impairments in both receptive and expressive language. PD 645. Those impairments result in difficulties formulating thoughts, comprehending verbal information, using language appropriately in social situations, and formulating thoughts and comprehending complex verbal information. *Id.*

33. Based on her evaluation, Dr. T. ■ found that the student has: a specific learning disorder with an impairment in reading; a specific learning disorder with an impairment in written language; a specific learning disorder with an impairment in mathematics; a language disorder; a social (pragmatic) communication disorder; attention deficit hyperactivity disorder, inattentive type; and, an unspecified anxiety disorder. PD 644-646. He has not received the type and amount of educational services that he needs. Testimony, Dr. T.

34. Dr. T. recommended that the student be placed in a program that could address all his "specific language, visual spatial, learning, attention, and social difficulties" in a small program with a low

student to teacher ratio. PD 647. She specifically recommended [REDACTED] School and provided specific educational reasons for her recommendation. PD 647-649. Additionally, she recommended the summer intensive reading and learning interventions program at Lindamood-Bell as compensatory education. PD 647. She also recommended private speech/language therapy to address the student's expressive and receptive language disorders. PD 648. The student's learning disability is "so severe" that he needs intense intervention to "get over the hump of understanding language." Testimony, Dr. T. The report includes several behavioral intervention recommendations for home and school, psychotherapy, and structured activities to strengthen the student's social skills. PD 648, 649.

35. The district held an eligibility and IEP meeting on May 10, 2017. SD 354, 385. The student was in sixth grade at that time. SD 356. In addition to district staff and counsel, the parent and her attorney, educational advocate, and independent evaluator (Dr. T.) attended the IEP meeting. SD 355. The mother updated staff on the student's medical conditions, including recent diagnoses of encopresis and ADHD. SD 356. The team reviewed the recent evaluations, including the independent evaluation. SD 356. The district's school psychologist, Ms. A., found it "reliable and valid," but disagreed with its interpretations. Testimony, Ms. A. The district's psychologist is "familiar" with the TONI-4 but has never administered it. *Id.* The reports from other district team members state that they also had read the independent evaluation report. SD 590, 594. The eligibility determination report indicates that the review at the meeting was limited to memorializing the diagnoses in that evaluation and noting that it "reaffirms a relative strength in using visual spatial skills to solve problems." SD 357. The meeting notes do not report a discussion of Dr. T.'s finding that the student has a severe language disorder, not a mild intellectual disability or autism, or a consideration of the discrepant findings between the district's evaluations and the independent evaluation. SD 386-399. The IEP team voted on the student's eligibility and determined that the student is IDEA eligible as a student with a mild intellectual disability, speech/language impairment, autism, and other health impairment. SD 360; Testimony, Dr. T.

36. After a lengthy meeting, the district's proposed educational

program includes placement in a separate class for all academic instruction and 60 minutes/week speech/language, and 30 minutes/ week social work. SD 457. Consult services for health, independent functioning, speech/language, and social/emotional are also required. *Id.* Accommodations and significant modifications are required in language arts and social sciences. SD 416, 421,426, 446.

37. The district recommended placement for the student for the 2017-18 school year in a cluster program at Edison Park School. SD 854. The cluster program is for students who require a significantly modified curriculum with intensive supports. *Id.*, Testimony, Ms. S. There are six to eight students in a class. *Id.*

38. The IEP includes ESY for summer 2017. SD 461, 462. In addition to academic instruction, the ESY program was to include 30 minutes/week speech/language and 15 minutes/week social emotional services. *Id.* The district's manager of student transportation received a request for ESY bus services for the student on July 5, 2017. Testimony, Mr. H. The bus service was scheduled to being on July 12<sup>th</sup>. *Id.* The student attended for three or four days but stopped attending because he was with non-verbal students and students with behavior problems. Testimony, Mother.

39. On August 21, 2017, the parent informed the district that she was unilaterally placing the student at █████ School and would seek reimbursement of costs associated with that placement. PD 31; Testimony, Mother. █████ serves student with complex, language based learning disabilities, mild behavior problems, traumatic brain injury, speech/language, emotional disturbance, and other health impairments. Testimony, Dr. J. There are eight to ten students in a room for grades 6 to 8, with at least two adults. *Id.* Related services are integrated into the classroom. *Id.* The reading curriculum is multisensory Orton Gillingham provided in two-hour blocks to work on comprehension, phonics, and writing. *Id.* Assistive technology is integrated into the classroom. *Id.*

40. █████ accepted the student after reviewing his prior IEPs, the independent neuropsychological evaluation and other evaluations, and an interview with the student. *Id.* The student's primary eligibility at █████ is OHI. *Id.* According to Dr. J., the student

“absolutely” does not have a cognitive disability or autism: he functions very independently, participates in class, is an eager talker and is responsive, makes eye contact and is eager to be involved with people, and has no stereotypical behaviors. *Id.* He is in a classroom with six other students, all of whom are verbal, and is making progress on all his goals. *Id.* There is “nothing” that makes her think that the student has an intellectual impairment. *Id.*

41. The student was given the Woodcock Reading Master Tests, 3<sup>rd</sup> Edition (WRMT-III) in September 2017 at ██████ to assess his overall reading achievement PD 931-935. His grade equivalency (GE) scores on the WRMT-III were: basic skills GE 2.3; word identification GE 3.0; word attack GE 1.5; passage comprehension GE 1.6. PD 934. On the Peabody Picture Vocabulary Test, his receptive single-word vocabulary score was 58, and his expressive single-word vocabulary score was 60. PD 936. These below average scores “align with his difficulties” understanding language and instructional input throughout the school day. *Id.*
  
42. ██████ held a domain meeting on October 2<sup>nd</sup> and an IEP meeting on November 7<sup>th</sup>. PD 916, 917. Since starting at ██████, the student had moved up two reading levels, and his score on the Comprehension Strategy assessment increased from 60% to 75%. PD 919. In writing, he scored 6/20 on a single progress rubric. *Id.* The BRIEF-2 was given in October, and no areas of executive functioning were within a significant range. *Id.* The student was proficient and independent with assistive technology and was using text-to-speech and annotation tools. *Id.* The team also reviewed Dr. T.’s recent neuropsychology evaluation. *Id.* At ██████, the student demonstrated functional fine motor skills and showed no evidence of sensory needs. *Id.* Despite a recent diagnosis of social anxiety disorder, he was comfortable with his peers in the school setting. *Id.* Based on its review, the team determined that the student’s eligibilities are OHI (primary) and speech/language impairment (secondary). PD 920, 021. These disabilities impact the student in all academic areas. PD 920. The team also determined that the student is progressing at a significantly slower rate than expected, that his performance is significantly discrepant in reading, writing, and math, and that his instructional needs are significantly different and exceed general education resources. PD 922, 923. Based on

those determinations, the team found the student has a specific learning disability and requires special education. PD 923.

43. The student's IEP includes goals for reading, writing, verbal expression, and math. PD 994-1002. His special education services include: literacy 570 minutes/week; math 220 minutes/week; science 200 minutes/week; social studies 200 minutes/week; speech language 80 minutes/week; social work 60 minutes/week; occupational therapy integrated consult 30 minutes/week. PD 1006. The IEP requires special transportation and ESY. PD 1007.
44. ■■■■ uses the Fountas & Pinnell reading program. PD 927. When the student began at ■■■■, he was at instructional level D and scored 98% on accuracy and 4/6 on comprehension. PD 927, 939, 942. By the end of the first quarter, he was at instructional level F with 99% accuracy and 6/7 on comprehension. PD 927. Reading instruction includes explicit instruction in comprehension skills, which is a deficit area for the student. *Id.* To address his learning disability, information is presented visually through graphic organizers, repetition, and multisensory activities. *Id.* Based on the Comprehension Strategy Assessment Grade 1, the student's listening comprehension increased from 60% to 75%. *Id.*
45. In math, the student has difficulty understanding verbal or written instructions and benefits from manipulatives, visuals, and being shown how to solve problems PD 941. He was working on skills at a fourth grade level and able to solve multi-digit addition and subtraction problems and one-digit by two-digit multiplication and division problems. *Id.*
46. The IEP includes specific goals to address the student's academic and functional needs. PD 994-1002. Assistive technology is required. PD 1003. Required special education and related services includes: 570 minutes/week literacy; 220 minutes/week math; 200 minutes/week science; 200 minutes/week social studies; 80 minutes/week speech-language; 60 minutes/week social work; and 30 minutes/week occupational therapy, integrated consult. PD 1006. ESY and special transportation are also required. PD 1007.
47. The parent has noticed significant difference in the student since he began at ■■■■. He is able to read and tell her about what he has

read. Testimony, Parent. He is the student council representative for his class and also is the teacher's helper. *Id.* He has friends, and his attendance is the best he has ever had. *Id.* He has no encopresis or anxiety. *Id.* He is an "eager learner" in school and has "blossomed into a beautiful tree." Outside of school, he sets up play dates with his friends. *Id.*

48. ■■■■■ tuition for the student for the current school year is \$40, 228.30. PD 1008. As of November 15, 2017, the parent had an outstanding balance of \$12, 137.47.

49. In addition to ■■■■■ tuition, the parent has incurred significant expenses for services related to obtaining an appropriate evaluation and educational placement for the student. These expenses include: Ms. B., educational advocate \$2,320 paid (PD 1084-1087); Lindamood-Bell evaluation \$295.00 paid (PD 1026); Dr. T■■■■ evaluation, paid \$100.00, unclear total amount due (PD 1009); mother driving student round-trip from home to school 2x/day at 22 miles/one-way trip for 45 days of school at state rate of .535/mile – total of \$1059.30 (PD 1088-1090); reading tutoring one session, paid \$19.26 (PD 1010); and, ■■■■■ School (■■■■■ after school program) \$135.20, paid (PD 122-125).

#### **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).

**RECEIVED 12/19/2017 - SPECIAL EDUCATION SERVICES**

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 proposed case authority, and the undersigned’s own legal research, the hearing officer’s legal conclusions are as follows:

Whether the district failed to accurately determine the student’s disabilities that require special education services when it found him eligible as a student with an intellectual disability:

The district changed the student’s eligibility on March 21, 2015 to include mild intellectual disability, along with his then-current eligibilities of autism and OHI. ¶8. Mr. M. The evidence shows that although the school psychologist was aware that a language impairment could impact a student’s performance on a verbally-based probe such as the RIAS, he did not administer any other assessments to determine if the student’s performance was impacted by a language disorder. *Id.* Additionally, there is no evidence that he considered whether the student’s severe language impairment impacted the functional skills assessed on the Vineland.

At the May 2017 eligibility and IEP meeting, the district reviewed the findings of the independent evaluation and disagreed with its interpretations. ¶36. The district has offered no explanation of the basis for its disagreement or why it refused to consider the impact of the student’s severe language disorder on his academic and functional performance. *Id.* Dr. T. was aware of the student’s delayed speech and diagnoses of language disorders; therefore, when the student’s WISC-V scores were low, she questioned whether his performance had been impacted by his delayed speech and expressive and receptive language disorders. ¶30. She conducted an additional assessment, the TONI-4, to measure the student’s intellectual functioning separate from language demands. ¶31. On the TONI-4, the student’s intellectual abilities were within the average range. *Id.* The evidence shows that when the student’s intellectual functioning was measured separate from any language demands, his intellectual abilities were within the average

**RECEIVED 12/19/2017 - SPECIAL EDUCATION SERVICES**

range. ¶31. The student's progress at █████ supports Dr. T.'s finding that the student has a language disorder, not a mild intellectual impairment. ¶38, 39.

Based on the foregoing evidence, the undersigned finds that the district failed to accurately determine the student's disabilities. The student does not have mild intellectual disability.

Whether the district failed to adequately consider the outside evaluations provided by the parents:

The May 10, 2017 eligibility determination documentation mentions the independent evaluation and lists the diagnoses given by the independent evaluator. ¶34. It also notes that the student's "relative strength in using visual spatial skills to solve problems." *Id.* Although several of the district's individual evaluations mention the independent evaluation, there is no evidence showing actual consideration of the independent evaluation. A district must consider a parent-initiated evaluation in "any decision made with respect to the provision of FAPE to the child." 34 CFR §300.502(c)(1). Lack of review of an independent evaluation at an IEP meeting may lead to a finding of predetermination and thus a denial of FAPE. *M.S. v. Los Angeles Unified School District*, 68 IDELR 162, Dist. Ct. Central Dist. Ca (September 12, 2016). In *M.S.*, the student had obtained a neuropsychological evaluation and provided an evaluation report to the district prior to the IEP meeting. *M.S.*, p.4. The IEP team did not discuss or review the evaluation at the IEP meeting. *Id.*, p.5. The independent evaluation recommended residential placement, which was not discussed at the IEP meeting. *Id.*, p. 13. The court found that the district's failure to discuss the evaluation and its recommendations was a procedural violation that resulted in the loss of an educational opportunity and thus denied the student a FAPE. *Id.*, p. 14.

In this case, the district's psychologist gave no basis for her disagreement with the findings of the independent evaluation, despite her statement that the results of the independent evaluation were "reliable and valid." ¶36. There is no evidence showing that the IEP team discussed the basis for the district's disagreement with the independent evaluation or its refusal to consider the impact of the student's severe language disorder on his academic and functional performance. As in *M.S.*, the evidence shows that although district staff had read the

independent evaluation, they did not review or consider it in a meaningful way at the IEP meeting.

Whether the district failed to provide the student with a proper program (IEP) and placement to meet the student's educational and related service needs in school years 2015-16, 2016-17 and proposed 2017-18 IEP:

The student's program and placement since the 2015-16 school year have been based on eligibility of mild intellectual disability, autism, and OHI. ¶10-38. The student's IEPs required numerous accommodations and modifications and a significantly modified curriculum in all academic subjects. ¶11, 13, 22. The instructional goals and PLAAFPs and goals are the same in the March 13, 2015 and October 20, 2015 IEPs, despite the parent's concerns about the academic progress, curricular modifications, and grades. ¶13. In March 2016, the student was reading at a first grade level and his curriculum was modified to a kindergarten/first grade level. ¶15. His related service minutes are the same as in the prior IEP. *Id.* In December 2016, the student's reading score on the NWEA MAP assessment was the same as it had been in fall 2012: the 1<sup>st</sup> %ile. ¶22. He also was at the 1<sup>st</sup> %ile in math. *Id.* His related service minutes were the same as in the prior IEP. *Id.* Despite his documented severe speech/language deficit, the student's speech/language minutes were not increased until the May 2017, when the team decided he needed 60 minutes/week. ¶37. Social work minutes remained at 30 minutes/week. *Id.* Thus, the evidence shows that the student has not made educational progress in the program offered by the district. The program and placements provided by the district have not meet the standard set out in *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017): "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at 1001. The district's proposed placement in a cluster program that uses a significantly modified curriculum with intensive supports would continue essentially the same program that has failed the student in the past. The cluster program is for students who require a significantly modified curriculum with intensive supports. ¶38. The evidence shows that the student does not have an intellectual disability and does not require a significantly modified curriculum. The evidence further shows that the student has flourished at █████ in a program that addresses his educational and functional needs. The student has moved up two reading levels, and his reading comprehension has increased from 60% to 75%. ¶45. In math, he is

**RECEIVED 12/19/2017 - SPECIAL EDUCATION SERVICES**

working on a fourth grade level. ¶47. He has friends, good attendance, and is a student council representative. This is the kind of progress required by *Andrew F.*

Whether the district failed to provide the student sufficient related services in speech/language and social work:

The district found that the student had delays in receptive, expressive, and pragmatic language. ¶4, 6. Those deficits impacted both his academic progress and his social skills and peer relationships. ¶6. His December 2014 IEP provided 30 minutes/week of speech/language therapy and 15 minutes/week of social work to address these deficits. ¶6. Three months later, in March 2015, the IEP team met and discussed his pragmatic language problems and poor social skills and allegations that he was being bullied. ¶8. The student's paraprofessional confirmed the student's difficulty with peers. ¶16. Despite these repeated concerns, neither social work services nor speech/language services were increased. ¶9. The district did not seriously consider the parent's academic and social concerns until she retained an educational advocate in December 2016. ¶19. At that time, the student still had difficulty answering "what" and "why" questions. ¶21. Two months later, the district determined that the student has a significant language disorder. ¶24. The district's proposed program increases the student's speech/language minutes to 60 minutes/week. ¶37. Social work minutes remain the same: 30 minutes/week. *Id.*

The evidence shows that student's speech/language impairment impacts him in all academic areas and also socially. ¶43. He requires more intensive speech/language services and a curriculum that incorporates an understanding of his language disorder. ¶44-46. He also requires more intensive social work services. ¶47. In a placement that meets the student's needs, his problems with attendance, anxiety, and encopresis have significantly improved. ¶48. Based on the foregoing, the evidence shows that the district failed to provided sufficient related services to meet the student's needs.

Whether the district failed to provide appropriate ESY program and placement:

The district's ESY program/placement is a program for students who are IDEA eligible as students with mild intellectual disabilities and/

or autism. SD 385. The determination in this hearing is that the student does not have either of those disabilities. Therefore, the district's proposed ESY program and placement was not appropriate to meet this student's needs.

Whether the above-alleged failures denied the student a free appropriate public education (FAPE):

A district must provide "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017) ("Endrew F."). The evidence in this case shows that the student did not make appropriate educational progress in light of his circumstances under the district's program and placements. Because the district did not accurately determine the student's eligibilities, it was unable to develop an IEP that an offered educational program reasonably calculated to enable the student to make progress in light of his circumstances. The evidence shows that the student did not make progress in the district's program. In February 2017, student's academic performance was on a mid-1<sup>st</sup> grade to early 3<sup>rd</sup> grade level. ¶26. He had continual attendance problems since school year 2013-14, which increased over the years from 10 absences to high of 40. *Id.* His performance in the private placement is a stark contrast to this. ¶41-48. Based on this evidence, the undersigned finds that the district failed to provide the student a FAPE and that the district's proposed placement also fails to provide him a FAPE.

The parent has unilaterally placed the student [REDACTED]. She informed the district of the unilateral placement on August 21, 2017, the same time that the student began attending [REDACTED]. ¶40. The IDEA provides that the cost of reimbursement for placement in a private school may be reduced or denied if "10 business days ... prior to the removal of the child from the public school, the parents did not give written notice to the district" of their concerns and intent to enroll their child in a private school at public expense." 20 U.S.C. §1412(a)(10)(C)(iii)(I); 34 CFR §300.148(d)(1)(i),(ii). A hearing officer may require the district to reimburse the parent for the tuition if the hearing officer finds that the district did not provide a FAPE to the student in a timely manner prior to the enrollment. 34 CFR §300.148(c). The evidence in this case shows that the parent did not provide the requisite 10-day notice. ¶40. However, the evidence also shows that the district had not provided a FAPE to the

student and that the district's proposed placement would not provide him with a FAPE. It is also noted that prior to the unilateral placement, the parent did make the student available for evaluation by the district. 34 CFR §300.148(d)(2). The undersigned has found that parent's unilateral placement is appropriate and provides education instruction that is specifically designed to the student's unique needs. Based on the foregoing, the undersigned finds that there is no basis to reduce the tuition reimbursement. Additionally, the private placement is approved by the ISBE.

The parent has requested that the undersigned order that the student remain at the private placement at the private placement for as long as the private placement finds that he is making appropriate academic progress. This is a very open-ended request. In *Draper v. Atlanta Independent School System*, 518 F.3d 1275, 49 IDELR 211 (11<sup>th</sup> Cir. 2008), the administrative law judge awarded the student a choice of two remedial options, one of which was placement in a private school until a date certain or the student received a high school diploma, whichever came first. *Id.*, p.5. On appeal, the district court awarded placement in a private school. *Id.*, p.6. The 11<sup>th</sup> Circuit found that the private placement was compensatory education that was proportionate to the district's IDEA violations. Like the student in this case, the student in *Draper* had been misdiagnosed as a student with a mild intellectual disability and thus inappropriately placed. *Id.*, pp. 4,9. The court held that the award was "reasonably calculated to provide the educational benefits that likely would have accrued from special education" that the district should have provided. *Id.*, p. 11. Based on this case, the undersigned finds that an appropriate compensatory education remedy is placement at [REDACTED] until that school determines that the student is ready to return to a public school program.

### **ORDER**

IT IS ORDERED THAT:

1. The district shall convene an IEP meeting within 15 school days of receipt of this Order and:
  - a. Change the student's eligibility to learning disabilities, speech/language disorder, and other health impairment;
  - b. Place the student at [REDACTED] School at district expense; and,
  - c. Provide round trip transportation for the student to [REDACTED]

**RECEIVED 12/19/2017 - SPECIAL EDUCATION SERVICES**

School.

2. The district shall maintain and pay for the student's placement at [REDACTED] until [REDACTED] determines that the student is ready to return to a public school program.
3. The district shall provide summer instruction in the Lindamood Bell reading program for summer 2018;
4. The district shall reimburse the parent for:
  - a. Services from the educational advocate, totaling \$2,320.00 (PD 1084-1087);
  - b. The independent neuropsychological evaluation, \$100.00 (PD 1009);
  - c. Transportation provided by the parent from home to [REDACTED], round-trip at 44 miles/day for 45 days (1,980 miles @.535) \$1059.30;
  - d. Tuition paid to [REDACTED] School upon presentment of a final bill showing payments to date.
  - e. [REDACTED] after-school programs the student has attended (\$400.00) PD 119, 120; and,
  - f. Lindamood Bell assessment, \$295.00 PD 1036

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

**RECEIVED 12/19/2017 - SPECIAL EDUCATION SERVICES**

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.

**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: DECEMBER 15, 2017

---

Mary Schwartz  
Impartial Hearing Officer

**RECEIVED 12/19/2017 - SPECIAL EDUCATION SERVICES**

6116 S. University Avenue, 2N  
Chicago, Illinois 60637  
773.947.0526 (facsimile)  
708.912.0755 (cellular)  
[ihoschwartz@gmail.com](mailto:ihoschwartz@gmail.com)

**CERTIFICATE OF SERVICE**

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

Mr. Charles Fox, Esq.  
Ms. Julie Welsh, Esq.  
Law Offices of Charles P. Fox  
355 W. Dundee, Ste. 209

**RECEIVED 12/19/2017 - SPECIAL EDUCATION SERVICES**

Buffalo Grove, Illinois 60089

Ms. Lucille Blackburn, Esq.  
CPS-Due Process & Mediation  
42 W. Madison St., 2<sup>nd</sup> Floor  
Chicago, Illinois 60602

Mr. Andrew Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777

before 6:00 p.m. on December 15, 2017.

---

Mary Schwartz  
Impartial Hearing Officer  
6116 S. University Ave., 2N  
Chicago, Illinois 60637  
773.947.0526 (facsimile)  
708.912.0755 (cellular)  
ihoschwartz@gmail.com

RECEIVED 12/19/2017 - SPECIAL EDUCATION SERVICES