

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

██████████

Student,

Case No: ██████████

v.

Kathleen C. Fuhrmann, Impartial Hearing

Officer

City of Chicago SD 299,

School District.

FINAL DETERMINATION AND ORDER

JURISDICTION

The undersigned has subject matter jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14/8.02a *et seq.* The personal jurisdiction in this matter of the undersigned is limited to the parties to this matter, specifically Student, Mother, Father, and the City of Chicago School District 299. The standard of proof in impartial hearings under the IDEA is a preponderance of the evidence. 20 U.S.C. § 1415(i)(2)(C)(iii). Under this standard, the party seeking relief must establish that the fact sought to be proved is more probable than not.

BACKGROUND

Petitioners, ██████████, are the parents of ██████████ ("Student"), a nine-year-old student with a disability. On August 30, 2017, Petitioner filed a Due Process Complaint ("Complaint") against the Chicago Public School District No. 299 ("District") pursuant to the Individuals with Disabilities Education Act ("IDEA"). Parents invoked "stay put" placement at ██████████ Elementary during the pendency of these proceeding. This Hearing Officer was appointed to preside over this case on September 5, 2017. Petitioners were represented by ██████████ from August 30, 2017 to October 26, 2017. On August 27, 2017, ██████████ requested leave to withdraw as Parent/Student's counsel and ██████████ entered an appearance as counsel for Parents/Student. The City of Chicago School District 299 is represented by ██████████ of Chicago Public School District No. 299, Due Process & Mediation throughout this matter.

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On September 8, 2017, the Parties waived the mandatory resolution meeting in writing. The 45-day decision deadline began on September 9, 2017. On September 14, 2017, an initial status conference call was convened in this matter. The parties scheduled the prehearing conference during this status conference call. On September 27, 2017, a prehearing conference was conducted by telephone from 3:00 p.m. to 4:40 p.m. Both parties participated in the Prehearing Conference through their respective counsel. The hearing was scheduled to be convened on October 16, 17, 19, 24, 31, and November 2, 2017 at [REDACTED] with written closing argument due on November 15, 2017.

On October 17, 2017, the parties filed a Joint Motion to Strike Hearing Date. After a status conference to discuss the motion, the motion was granted, and the October 24, 2017 hearing date was stricken to allow the parties to utilize that time for ongoing settlement negotiations. The five-day disclosure due date was adjusted to October 24, 2017 at 5:00 p.m. and the remainder of the hearing dates remained unchanged.

On October 27, 2017, the hearing officer received email notification from [REDACTED] [REDACTED] informing her that [REDACTED] no longer represented the [REDACTED] family. On October 27, 2017, [REDACTED] entered an appearance as counsel for Parents/Student. In addition, Parent's counsel filed a Motion for Continuance of the Hearing and Motion to Extend the Hearing Deadline. The Motions were granted over the objection of the District, the hearing dates of October 16, 17, 19, 24, 31, and November 2, 2017 were stricken. The hearing was rescheduled to convene on December 18 to 21, 2017 from 8:00 a.m. to 4:00 p.m. and the 45 day decision deadline was extended to January 2, 2018. The five-day disclosures are due on December 11, 2017 at 5:00 p.m.

A status conference was convened in December 8, 2017. The parties discussed the location of the hearing. The Parents requested that the hearing be changed to a non-school neutral location, because schools, with the inherent interruptions, are not conducive to an effective hearing. The District objected to the request due to the increased cost involved for District employees who work at the school to travel to another location to testify at the hearing. Over the District's objection the Parents' request was granted. The parties worked to schedule the hearing on December 18, 19, and 21, 2017 from 8:00 a.m. to 4:00 p.m. at the CPS Garfield Park Field Office, located at 2651 W. Washington, Chicago, Illinois 60612. The hearing was also be convened on December 20, 2017 from 10:30 a.m. to 5:00 p.m. at the Chicago Public Library Lincoln Belmont Branch, located at 1659 W. Melrose Street, Chicago, Illinois 60657.

The closed hearing was convened on December 18, 2017 from 8:00 a.m. to 5:00 p.m. at the CPS Garfield Park Field Office, located at 2651 W. Washington, Chicago, Illinois 60612. Present were: [REDACTED]

[REDACTED] and the undersigned. The closed hearing was convened on December 19, 2017 from 8:00 a.m. to 5:30 p.m. at the CPS Garfield Park Field Office, located at 2651 W. Washington, Chicago, Illinois 60612. Present were: [REDACTED]

[REDACTED] Esq. and the undersigned. The closed hearing was convened on December 20, 2017 from 10:30 a.m. to 5:00 p.m. at the Chicago Public Library Lincoln Belmont Branch, located at 1659 W. Melrose Street, Chicago, Illinois 60657. Present were: [REDACTED]

[REDACTED] and the undersigned. The closed hearing was scheduled to convene on December 21, 2017 from 9:00 a.m. to 4:00 p.m. at the CPS Garfield Park Field Office, located at 2651 W. Washington, Chicago, Illinois 60612, however, due to a malfunction of the court reporter's equipment and the unavailability substitute equipment or alternate court reporter, the hearing was continued. Present were: [REDACTED]

[REDACTED] and the undersigned. The closed hearing convened on January 16, 2018 from 8:00 a.m. to 6:13 p.m. at the CPS Garfield Park Field Office, located at 2651 W. Washington, Chicago, Illinois 60612. Present were: [REDACTED]

[REDACTED] and the undersigned. The hearing was continued to January 22, 2018 at 9:00 a.m. via telephone conference call for the presentation of oral closing arguments. Participating in the telephone conference call were [REDACTED]

and the undersigned.

Nancy K. Speare, CSR and Robin Ochenkowski, CSR of Toomey Reporting, Chicago, Illinois were the court reporters for this hearing on December 18 through 20, 2017 with Ms. Speare transcribing in the mornings and Ms. Ochenkowski transcribing in the afternoons each day. Nancy K. Speare, CSR of Toomey Reporting Chicago, Illinois was the court report for the January 16, 2018 hearing proceedings. Maureen Woodman, of Wichman Klawitter Reporting, Chicago, Illinois was the court report for the January 22, 2018 proceedings.

No transcripts were issued prior to the date of this decision. The testimony referenced below is based on the undersigned's written hearing notes and memory. In rendering this decision, the undersigned has considered all documents entered into evidence, testimony of the witnesses, the parties' closing arguments and the undersigned's legal research.

The following persons testified in this matter: [REDACTED]

[REDACTED]

Hearing Officer Exhibits IHO 1 to 29 were admitted into evidence. Joint Exhibits JE 1- 1 to 37, JE 2-1 to 38, JE 3-1 to 41, JE 4-1 to 17, JE 5-1 to 5, JE 6-1 to 35, JE 7-1 to 5, JE 9-1 to 8, JE 10-1 to 31, JE 11-1 to 44, JE 12-1 to 2, JE 13-1 to 7, JE 15-1 to 6, JE 16-1 to 15 were admitted into evidence. Parent's exhibits P2-9 and P10 were admitted into evidence. District's exhibits R 2-1 to 249, R 9-1 to 14, R 10-1 to 2, R 13-1 to 4, R 14-1 to 12, R 29-1 to 4, R 31-1 to 4, R 33-1 to 3, R 34-1 to 11, R 35-1, R 39-1 to 14, and R43-1 to 4 were admitted into evidence. The parties presented oral closing arguments and presented points of authority documents in support of their respective cases. The 45-day decision deadline is February 21, 2018, however, pursuant to 105 ILSC 5/14-8.02a(g-55), the decision is due on February 1, 2018.

ISSUES PRESENTED FOR HEARING

The issues to be determined are as follows:

Issue One: Whether the District predetermined the June 2017 IEP for Student, denying Parents meaningful participation in the IEP meeting, which resulted in a denial of a free appropriate public education to Student?

Issue Two: Whether the District's June 2017 proposed placement [REDACTED] (adding Science, Social Studies, and non-academic subjects in a self-contained classroom) is too restrictive and a violation of the IDEA's least restrictive environment provision?

Issue Three: Whether the District's June 2017 proposed placement (adding Science, Social Studies, and non-academic subjects in a self-contained classroom) is inappropriate given [REDACTED] needs?

Issue Four: Whether, from August 2015 to present, the District's method of teaching in the self-contained classroom during the subjects of reading, writing, and math were appropriate given Student's needs to provide him with a free appropriate public education?

Petitioners seeks the following remedies:

- i. Finding that District failed to provide Student with a FAPE in the LRE,
 - ii. Finding that District failed to provide Parents with procedural rights and engaged in retaliatory action against the family throughout the period of August 2015 to present,
 - iii. Placement at [REDACTED] [REDACTED] [REDACTED] in general education Science, Social Studies, and non-academic subjects until Student's matriculation or age out of special education,
 - iv. Order a multi-sensory approach to teaching Student in his self-contained academic subjects of Reading, Writing, and Math,
 - v. Compensatory education in the form of reimbursement to Parents for summer tutoring services and Occupational therapy service for the missed October to April 2016-2017,
 - vi. Any additional relief as the Impartial Hearing Officer deems appropriate.
- f. Respondent raises the following defenses:
- i. District asserts that it evaluated Student in all relevant areas and met to consider the evaluation reports. After finding Student eligible

for special education, the Team discussed Student's needs in the academic setting, developed an IEP and determined the setting for IEP implementation. District asserts that Parents participated in all aspects of this decision making.

ii. District asserts that its proposed placement is appropriate due to Student's need for significant modification of the general education curriculum in the areas of English Language Arts, math, science and social studies and his social needs. District asserts that placement in a [REDACTED] [REDACTED] which provides a significantly modified curriculum is most appropriate for Student.

iii. District asserts that the transfer of Student to a new school is in response to Student's needs for a significantly modified curriculum in all core academic areas and denies Parents' allegations of retaliation.

The District has a statutory duty to produce evidence that it has properly identified the student's disability needs in terms of their nature and severity, whether the student has been determined as eligible for special education and related service and that it is providing or has offered a free appropriate public education (FAPE) to the student in the least restrictive environment (LRE). (See 105 ILCS 5/14-8.02a(g-55).) This obligation to present evidence does not place the burden of proof on the district. *Kerry M. v Manhattan Sch. Dist. #11*, 106 LPR 58547 (N.D. Ill. 2006).

The standard of proof in impartial hearings under the IDEA is a preponderance of the evidence. 20 U.S.C. § 1415(i)(2)(C)(iii). Under this standard, the party seeking relief must establish that the fact(s) sought to be proved is(are) more probable than not.

FINDINGS OF FACT

This Hearing Officer did not have the benefit of a transcript when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes and recollection. The Hearing Officer carefully considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether specifically referred to or cited when making her final determination. After considering all the evidence and well as the arguments of both counsels, this Hearing Officer's Findings of Fact are as follows:

Student

1. Student is a nine-year old, fourth grade male student with a disability who is currently eligible to receive special education and related services under the Other Health Impairments category. (R 34-1.) Student has attended [REDACTED] since kindergarten. Student is a friendly young man who has friends at school. (Testimony of Mother, Principal, [REDACTED], and R 9-1, and R 14-5.)

2. Student has presented with a very complex profile, including diagnoses of ADHD, vision impairments, developmental delays, and "longstanding difficulties with math and reading." (JE 4; testimony of Dr. H.).

3. Student has deficits in the areas of attention, vision and fine motor, executive function, academics (including reading, writing, and mathematics), and

social/emotional skills. Student requires one-to-one support from adults in the school setting. (Testimony of Dr. H, testimony of ASM, JE 4, JE 10, R 14, and R 34.)

4. Student has medical diagnosis of accommodative (misalignment when attempting to focus) esotropia (misalignment in which one or both eyes turn outward), amblyopia (the vision of one eye is reduced because the eye and brain do not work together) of both eyes, suppression of binocular vision, diplopia and oculomotor dysfunction. (R 14-3.) Student has a medical diagnosis of Attention-Deficit/Hyperactivity Disorder-Combined type or ADHD and Unspecified Neurological Disorder, which encompasses the diagnosis of Specific Learning Disability in Reading, Writing and Math. Student does not meet criteria for an Intellectual Disability given his well-developed verbal skills. (Testimony of Dr. H and JE 4-7.) These diagnoses were confirmed in August of 2017 (Testimony of Dr. H. and JE 15-1 to 6.)

5. [REDACTED] is a District neighborhood elementary school that also functions as a [REDACTED] if there is space available. [REDACTED] are assigned through a [REDACTED]. This system allows siblings of magnet students to attend [REDACTED]. Student is enrolled as a sibling lottery student, both of his brothers attended [REDACTED] (Testimony of CP¹.)

2015-2016 School Year (Second Grade)

6. In second grade, Student was eligible for special education and related services under the categories of Developmental Disabilities and Other Health Impairment. He was reported as receiving under an IEP (3/6/2015) 350 minutes per week (“mpw”) of language arts, 300 mpw of math, 7 mpw of social work services, 45 mpw of occupational therapy services and 30 mpw of speech services in a separate setting. In addition, Student received 100 mpw of language arts and 15 mpw of speech in a regular education setting. Finally, Student received consultative social work, occupational therapy, and speech therapy services and shared paraprofessional support. (R. 9-1.)

7. [REDACTED] a District employee since 1989, holds bachelor’s and master’s degrees, is Board certified in English/Language Arts, who holds an Illinois teaching certificate in special education, and bilingual education (both regular and special education). [REDACTED] took Wilson teaching method coursework offered through the [REDACTED] PTA but is not certified in Wilson. (Testimony of RSR.)

8. [REDACTED] was Student’s diverse learner (i.e. special education) teacher from Kindergarten through second grade and taught Student math for part of third grade. [REDACTED] operates a social skills group after school approximately once per month. Student participates in the afterschool social skills group. [REDACTED] provided Student with Wilson method tutoring, afterschool for 90 minutes per week (two sessions per week), but not as part of the school program. Wilson tutoring was done by [REDACTED] on his own time at [REDACTED]. [REDACTED] needed to tutor students using Wilson program as part of the Wilson training RSR was enrolled in. [REDACTED] asked Mother if Student could participate in the Wilson tutoring. [REDACTED] believed that Student would benefit from the Wilson program. (Testimony of [REDACTED])

¹ CP, [REDACTED] principal, holds bachelors and master’s degrees in education/reading. She holds Illinois type 3 and 75 certifications. CP has been employed by District for 18-20 years, serving as principal at [REDACTED] the past six (6) years. (Testimony of CP.)

9. [REDACTED] believes that Student did benefit from Wilson tutoring. [REDACTED] believes the Wilson phonics program is a good program but the comprehension component is not better than the [REDACTED] approach, a literacy-based approach to reading, for which the school has been recognized as a leader in literacy. [REDACTED] believes the literacy-based approach is better than Wilson for comprehension components of reading. (Testimony of [REDACTED].)

10. Wilson teaching method coursework was offered through the District and was paid for, at least in part, by the [REDACTED] PTA. (Testimony of Mother and CP.) [REDACTED] Wilson tutoring sessions were conducted at the school with the knowledge of the principal. (Testimony of CP.)

11. At the mid-point of second grade Student had not mastered the basic reading skills; he had not mastered phonemic awareness skills (sound-symbol relationship, initial and final sounds, identifying words beginning or ending with the same sounds for consonants), struggled with reversals, and had a very limited sight word vocabulary. (R 9-2.) In February 2016, Student was able to read at Fountas and Pinnell level F and Wilson step 1.5 and demonstrated literal and inferential comprehension at that level. Student had a Dolch Sight Word vocabulary of 82/100. He was experiencing letter and word reversals which negatively impacted his decoding skills. Student was in the 1st percentile in Reading on the Winter MAP, a district wide assessment. (JE 1-3.)

12. Student could identify numbers, count, identify which number was more or less, read a graph, order numbers, measure a picture and could add some single digit numbers. Student had difficulty with counting pictured items, calendars, and adding larger single digit numbers and subtraction. (JE 1-29 and R9-3.) Student was not able to add or subtract fluently and not able to add single digit numbers from 8 to 10. He demonstrated below grade level mental math strategies, being able to represent multiple addition strategies, find the value of collections of coins, use and apply place value concepts or use efficient grouping strategies to count objects. (JE 1-4.)

13. Student was able to form all 26 letters and with support was able to encode CVC words. With assistance, Student was able to write a narrative ending, and use transition words to tell his story. Student had difficulty writing with focus, organization, elaboration, spelling and mechanics. As a result, Student was not fluent in writing and his writing was “consistent, concrete examples of his struggles with visual-motor coordination.” (JE 1-3)

14. Student was able to complete tasks involved in classroom morning routines with cueing. He was able to dress, feed, manage his backpack and follow classroom transition routines and line-up with peers without assistance. (JE 1-3.) Student required one-to-one assistance for academic tasks requiring work production and completion. Student required refocusing and redirecting throughout the day and throughout each task. (R 24-5.) Student struggled with persevering through classroom lessons, work and had difficulty managing tantrums/meltdowns when pressed to complete work. He needed support to manage folder routines, homework, and returning textbooks. (JE 1-4.)

15. Student was friendly, interacting socially with his friends. Student had difficulty with social conventions connected to conversations, such as interrupting and waiting for response to questions. Student struggled with internal and external distraction, personal space, boundaries and interactions with peers. Student required adult support during peer interactions to be successful. He generally responded well to cues and prompts but was inflexible at times when frustrated. At times, Student

inappropriately focused on another student teasing and repeating what that student said. (R 24-5.)

16. Student earned passing grades in all his classes (R 9-3.) Student's grades were based on standard classroom criteria in all subject areas. (JE 1-35.)

17. At the March 2, 2016 IEP meeting, Parents raised concerns that the District was not providing Student with needed vision therapy services and adaptive technology needed to be successful in school. Parents also raised concerns regarding Student's daily social, sensory and academic struggles and of meeting the demand of the curriculum, not maturing with his same-age peers will sour Student to his school experience. (JE 1-7.)

18. Pursuant to Student's March 2, 2016 IEP (second/third grade) Student was eligible for special education and related services under the category of Developmental Disabilities. (R 14-8 to 10 and JE 1.) The IEP provided for direct special education services provided in regular classroom for 300 minutes per week ("mpw") of language arts, and 150 mpw of math. The IEP also provided for direct special education services provided in separate classroom for 350 mpw of language arts, 150 mpw of math, and 300 mpw in writing with related services provided in a separate setting including 11 mpw of social work services, 30 mpw of occupational therapy services and 30 mpw of speech services in a separate setting. In addition, Student received 100 mpw of language arts and 15 mpw of speech in a regular education setting. Student received consultative services by special education teacher to general education teacher (30 mpw), social work to special education teacher (15 minutes/quarter), occupational therapist to special education teacher (15 minutes/month), and shared paraprofessional support for 665 mpw. (JE 1 and R. 9-1.)

19. The IEP provided for the Student to receive adaptive writing surfaces, seat cushions, a visual schedules and checklists, noise canceling headphones, modified paper, behavior accommodations, including paraprofessional support. (JE 1-8 to 12.) Student's general accommodations included preferential seating, clarifying and repetition, checks for understanding, extended time for tasks and homework, speech sound production reminders, word recall support, grammatical recasting, social cueing, sentence starters for open ended responses, sensory regulation such as noise canceling headphones and sensory breaks, enlarged print (18 pt. font), worksheets with reduced crowding, visual breaks, use of a straight edge or typoscope for reading, use of a variety of writing utensils, use of scribe/dictation, and chewies. (JE 1-13 to 18.) The IEP also provides for accommodations and modifications for classroom assessments providing for individual administration in a separate location with minimal distractions, reading test to Student, magnify print, scribe responses, extended time, and stop-the-clock breaks. Accommodations and modifications for district and state assessments are the standardized accommodations allowed by each instrument that will not materially alter the test result. (JE 1-19 to 20.)

20. Student was observed to be able to manage his clothing, backpack, feed himself, follow classroom routines and line-up with peers in the school setting. (JE 1-3) Student required 1:1 assistance for academic tasks and work production/completion. Student needed assistance with learning materials and was more successful with prompting and scaffolding. He was reported to start out focused on the topic but moves off topic requiring redirection to learning task. (JE 1-5.)

21. Student was working on visual motor skills, motor planning, written expression, sensory processing, and participation in schoolwork and activities during

occupational therapy sessions. (JE 1-5) Student was also receiving outside occupational therapy at [REDACTED] to address motor skills, including poor coordination, dexterity, strength, visual skills, and attention to task. Student had a functional grasp with sufficient hand strength and control to manipulate school materials. He does not regularly stabilize his papers when writing unless frustrated. He is able to form all letters and numbers but is inconsistent in use of these skills. Student switches between upper and lower case and continued to produce reversals (“e”, “j” and “g”) however use of starting point dot helps and he requested dots to trace some letter formations. Student benefits from highlighted baselines and designated spaces to write responses. (JE 1-6.)

22. Student has and needs preferential seating for vision and attention. He does not walk safely on the stairs (jumping) and has difficulty control his voice volume in the stairwells and halls (sensory seeking behaviors). (JE 1-7.)

23. Student’s IEP provided Student should have access to him with adaptive writing surfaces, seat cushions, noise cancelling head phones, modified paper, and visual schedules. Student’s accommodations included had a shared paraprofessional (to provide sensory breaks, redirect and focus to remain on task, provide support for vision deficits, monitor and support the use of assistive technology, assist with fine motor activities, scribe), a variety of writing utensils, use of dictation or scribe, copies of teacher’s notes, enlarged text (to 18 pt. font) reduced crowding of text and worksheets and use of a straight-edge or typoscope for reading. (JE 1-8 to 19.)

24. Student RT, District school social worker, holds a bachelor’s degree in communication and a master’s degree in social work. She holds an Illinois type 73 license in and is a Licensed Clinical Social Worker. RT has been employed by the District for 15 years as a school social worker. Her duties as a school social worker include evaluation, consultation with staff and parents, direct services in classrooms, individually and groups. She has been assigned to [REDACTED] and two other schools for about ten (10) years. (Testimony of RT.)

25. RT has evaluated Student in each of the past two years and has provided direct services and consultation during the relevant period. Student participates in a weekly social work group and regular individual check-ins with the social worker. RT consults with Student’s special education teacher. RT is involved with crisis intervention for all students as needed and if available. (Testimony of RT.)

26. District service logs show that Student participated in a weekly social work group to work on social skills, character traits and self-regulation. (R 2- 128 to 187.) This service was provided as a part of the special education program, not as part of Student’s IEP and accordingly Student did not have a goal in these areas and there was no formal progress monitoring other than the service log progress notes. (Testimony of RT.)

27. Student struggled with attention during the school day but was responsive to redirection. Student was not aware of conversations going on around him and frequently interrupted others. Student was able to initiate a conversation with a peer but would walk away before hearing the response. Student struggled with turn taking. Student needed paraprofessional support to prompt and cue during social interactions. (Testimony of RT and JE 1-4.) Student struggles with personal space and boundaries, getting too close to the faces of his peers. Student struggles with keeping his hand away from his face. (Testimony of RT and JE 1-21.) Student’s IEP goal was to use appropriate physical and mental boundaries for two instances per day as measured by a weekly interview with his teacher or social worker. (JE 1-22.) Student received direct social work services in a separate class setting for 11 mpw for this goal.

28. Student's IEP provided for a shared paraprofessional to support the development of independent behaviors, to prompt and cue generally and around personal space, and boundaries and provide modeling for peer interactions. (JE 1-9 to

29. RT commented on the amount of social growth and new social skills Student demonstrated in his first/second grade school year. (JE 1-5.)

2016-2017 School Year (Third Grade)

30. During the 2016-2017 school year, Student was a third-grade student who received special education and related services pursuant to four IEPs: March 2, 2016 IEP, the November 1, 2016 IEP, the December 23, 2016 IEP and the February 8, 2017 IEP. (JE 1, JE 2, JE 3, and JE 6.)

31. AF, Student's third grade diverse learner (special education) teacher, holds a bachelor's degree special education and a master's degree in reading and literacy. During the 2016-2017 school year, AF was employed by the District and held an Illinois Educators license with a stipulation in special education. (Testimony of AF.)

32. EB, Student's third grade general education teacher, holds master's degree in elementary education and a type 3 Elementary Education certificate with ten (10) years teaching experience with the District at [REDACTED] (Testimony of EB.)

33. Student began third grade under the March 2, 2016 IEP, discussed above. (JE 1.) Student received direct special education instruction from AF in the general education and separate settings in the areas of Reading/Language Arts and Writing in a separate setting for the entire school year and in Mathematics until the December 23, 2016 IEP changed Student's Mathematics direct service setting to a separate setting only due to his need for more support in Mathematics. (Testimony of AF and JE 3-32 and 41.) At that time, Student was placed in [REDACTED] classroom for Mathematics instruction because AF's caseload did not allow for her to provide Student with a full block of Mathematics instruction, as required under the new IEP, and [REDACTED] caseload allowed for Student to receive a full block of Mathematics instruction from him. (Testimony of AF and [REDACTED]) Student was one of three students for Mathematics with [REDACTED]. [REDACTED] used a grade level curriculum with visuals and concretes during math instruction. [REDACTED] believes this was effective for Student's learning. (Testimony of AF and [REDACTED])

34. Student was in general education classroom for Science and Social Studies with a shared 1:1 paraprofessional. Student received various accommodations and modifications, including shared paraprofessional support for about one half of the period and was able to access grade level curriculum. (Testimony of EB, AF, CS², JE 1-9 to 10, JE 2-9 to 10, JE3-12 to 13 and JE 6-9.)

35. Student earned passing grades in his general education classwork each quarter of his third-grade year. Student's final grades were C in Science, C in Social Studies, A in Art, Physical Education and STEAM lab for third grade. (JE 16-10 to 11 and Testimony of EB.)

36. Student's grades in all subject areas were based on standard classroom criteria. (Testimony of EB, MT, JE 1-35, JE 2-35, JE 3-38, and JE 6-32.)

² [REDACTED] has a college degree earned in Toronto, Canada, holds an Illinois Paraprofessional certificate, Crisis Prevention Intervention certificate and has been employed as a special education classroom assistant for two (2) years with sixteen years of experience working in special education prior to employment with the District.

37. Student progressed in Reading from a Fountas and Pinnell level E to level J over the course of the school year, however most of the gains were made between January to April after a parent conference with teacher to discuss lack of progress in reading during the first semester. Reading accuracy rates reported showed 93% to 95% accuracy. Student's reading rate varied widely from 65 wpm to 26 wpm. Student's comprehension scores were 4/7 where reported. Student's sight word vocabulary increased from 72 to 145 words on the Dolch Word lists (Testimony of Mother, JE 13-4 and JE 16-4.)

38. Student was mastering basic math skills. He was able to count to 100 by 1,2,5, and 10s. He was able to add single digit numbers from 0 to 7 with 90% accuracy. Student was able to identify coins, understand equal sign, read a bar graph, represent addition number sentences, identify patterns in the hundreds chart, and sort and classify objects by characteristics. Student was able to independently pay attention to the mini-lesson and come prepared to work with all necessary materials. (JE 6-26)

39. Student had difficulty with counting over 200, counting by 25, fluency with subtraction facts, adding single digit numbers from 8 to 10, use mental math strategies, use multiple addition strategies, determine the value of a group of coins, apply and use place value concepts, and use efficient strategies to count objects. Student struggled to persevere to complete difficult assignments and remaining engaged during extended lessons. Student was in the 19th percentile on the 2016 Winter MAP test. Student needed the assistance of an adult to maintain attention, integrated visual spatial information, taking in visual information, and seeking sensory input. Student was retaught concepts using manipulatives and visually modified supports. (JE 1-26.)

40. Student had significant deficits in spelling, composition, grammar and mechanics. He was able to spell initial and final consonants of words but struggled to put his thoughts to paper with deficits in writing fluency. (JE 1-26).

41. Student began taking medication to treat his attention deficits in February 2017. Student's ability to attend increased noticeably after beginning on medication. (Testimony of Mother, AF, EB, CS, and JE 15-1.)

42. Student was very friendly with his peers in general education and special education classes. He did not always perceive social cues or initiate conversations during unstructured times. He was able to participate in group work but did not always adhere to social norms. (Testimony of EB and CS.) Student had outbursts some days followed by the need to reintegrate and goal setting with the paraprofessional. The paraprofessional speculated that the triggers for these outbursts were task avoidance and looming deadlines. This took away from class time. (Testimony of CS.) A functional behavioral analysis was not completed concerning these outbursts and a behavior plan was not developed or implemented for Student to address these behaviors. (Testimony of CS, AF, EC and RT.)

43. Information concerning these behaviors was not communicated to parents. Parents were called by school staff concerning three behavioral incidents, one wherein Student was upset because he was not able to be first in line, and two calls concerning Student tickling other students. Parents were never asked to pick up Student from school. (Testimony of Mother, RT, and EB.)

44. During third grade, Student's IEP provided for occupational therapy in a separate setting for 30 minutes per week. (JE 1-33.) Due to the illness and death of the occupational therapist assigned to ██████, Student did not receive any occupational therapy services from September 16, 2016 until April 6, 2017 (25 weeks), the first day of

service provided to Student by a private service provider contacted by District. District did not provide Student with any occupational services to compensate for the loss of services during this 25-week period. (R2 189 to 231.) Student received private occupational therapy services during that period of time. (Testimony of Mother.)

45. Once occupational therapy service began, Student worked with the occupational therapist on acquiring self-regulation strategies, developing fine motor skills, visual motor tasks and increasing his focus as shown by time on task. Service log notes indicate Student had difficulty with distractibility and resistance to non-preferred activities during sessions. (JE 1-223 to 26 and R 2-211 to 231.)

46. Student is friendly and has friends that he sits with a lunch and plays with during recess. Student is liked by his classmates. Student continues to have difficulty with personal space, boundaries, conversations, interrupting others, initiating but not sustaining conversations with peers and turn taking. He had a tendency to focus his attention on specific students, teasing them by repeating what they said. Student requires and receives paraprofessional support to navigate peer interactions and conversations. General and special education teachers observe that Student's level of social maturity is well below his peers. Student has grown in the social/emotional domain, he has and uses breaks and other strategies to bring himself down from frustration and push forward to complete his work. Overall his level of frustration has decreased. (Testimony of RT and JE 6-3 to 6.)

47. Student participated in a weekly social skills group as part of his general special education program, not as part of the IEP. There were no goals for this group in the IEP and there was no formal progress monitoring. Service log entries track content of the group meetings and discuss anecdotally Student progress. (Testimony of RT, and R 2- 188 to 231.) Student was provided with the same accommodations discussed above, including paraprofessional support and social work consultation with special education teacher. (JE 6- 10 to 15, JE 6- 30.) Student's goal in social work, was to use appropriate physical and mental boundaries for two instances per day as measured by a weekly interview with his teacher or social worker, was the same as the previous year, however the quarterly benchmarks focused on physical and mental boundaries their identification, discussion of and acting out of, boundaries, especially proximity in conversational settings and understanding the social consequences of touching his nose, mouth and body as well as not waiting during for the response to questions during communication. (JE 6-18 to 19.) IEP progress reports indicate that Student has made progress in identification and understanding of the social/behavioral skill but is not able to implement the skill independently. Student relies heavily on cues and prompts to use new social skills. (Testimony of RT and JE 16-1 to 2.)

48. Student participated in the ██████████ Sustainability Club where he enjoyed working with the chickens. (Testimony of Mother and JE 10-19, and R 34-4.)

Summer 2016-2017

49. During the summer of the 2016-2017 school year, in response to the changes made to Student's placement as contained in the June 14, 2017 IEP the Parents received a notice from the District that Student was placed in the ██████████ for the 2017-2018 school year. Mother researched the school and ██████████ through the District website and learned that the ██████████ was designed to meet the needs of students with mild and moderate cognitive impairment. Mother contacted the principal to discuss the program at ██████████ During a meeting with ██████████ principal Mother

confirmed that the [REDACTED] was as represented on the District website. Mother reported Student's reading and math levels to [REDACTED] principal who opined that Student would be the highest student in the program. Mother also learned that the [REDACTED] [REDACTED] used the Unique Learning Systems curriculum, a high interest low reading level program and that the program had a focus on adaptive behaviors. The only contact CES [REDACTED] students have with general education students is in lunch and specials. (Testimony of Mother.)

50. The District's IEP offered extended school year ("ESY") services to Student. (JE 11-43.) The District offered those services in a program not far from their home. This program would use the Unique Learning Systems curriculum and Mother did not believe that was appropriate for Student, so parents declined to enroll Student in ESY services. (Testimony of Mother.)

51. Parents disagreed with the June 14, 2017 IEP and the District's decision to place Student in the [REDACTED] program and they filed a due process complaint triggering stay put. (IHO 1.) District staff believed that they were unable to modify the IEP due to the parents stay put request. (Testimony of EC, EW, ES, RT and MT.)

52. Parents began private tutoring in reading, writing and spelling using the Orton-Gillingham method during July 2017. Student started at Fountas and Pinnell level J and after a month of tutoring was tested at level L. Student also demonstrated progress in writing, initially producing a couple of words and by December 2017 was writing about 12 words. The tutoring is very structured, using verbal and touch prompts, scheduled breaks and short activities. In mid-December 2017, parents have spent \$2,300 on tutoring with Chicago Home Tutoring. (Testimony of Mother.)

2017-2018 School Year (Fourth Grade)

53. During the 2017-2018 school year, Student is a fourth-grade student who is receiving special education and related services pursuant to the February 8, 2017 IEP as his "stay put placement". (JE 6.)

54. EW, Student's fourth grade diverse learner (special education) teacher, holds a master's degree special education. EW holds a current Illinois type 10 teacher certificate with an endorsement as LSB1 for kindergarten through twelfth grade. EW has been employed by District for seven (7) years and has only worked at [REDACTED] (Testimony of EW.)

55. MT, Student's fourth-grade general education teacher, holds master's degree in elementary education. She is a National Board Certified and a type 3 Elementary Education certificate with endorsements in language arts and social sciences. MT has been a fourth-grade teacher at [REDACTED] for seventeen (17) years and a District teacher for 23 years. MT teaches Student Science and Social Studies. (Testimony of MT.)

56. Pursuant to the February 8, 2017 IEP, Student receives direct special education instruction from EW in the general education and separate settings in the areas of Reading/Language Arts. He receives direct special education instruction in writing and Mathematics in a separate setting. (Testimony of EW and JE 6-30.)

57. Student was in general education classroom for Science and Social Studies with a shared 1:1 paraprofessional. Student received various accommodations and modifications, including shared paraprofessional support for about one half of the period. Special education teacher, occupational therapist, social worker, paraprofessional

consulted with general education teacher regularly concerning Student's learning and behavior. (Testimony of MT, EW, CS, JE 6- 8 to 9.)

58. Student has been provided with supports to access text in the general education classroom. Supports include level texted to read independently, texts read aloud by 1:1, video content and listen to recorded text. Student is challenged by distractions during class. Student is having difficulty listening and gaining knowledge and is having difficulty producing written work. Student spends a lot of time out in the hall having 1:1 read text to him. Student uses modified paper, iPad or scribe for written work and visuals. Student is struggling to gain content vocabulary and demonstrate knowledge. Student can say some vocabulary words but is unable to give the meaning. Student has been able to learn this year with a lot of support from the teacher, using study guides and with a lot of support at home. Student is good at memorizing parts but has difficulty with concepts. (Testimony of MT and CS.)

59. Science/Social Studies period is at the end of the school day. Student is frequently (about one half of the time) upset about events from lunch or math during Science/Social Studies periods. Student shows anxiety and frustration at these times. When dysregulated, Student sometimes calls out and makes noises in the classroom, for example breathing too loudly. These behaviors make the other students uncomfortable and disagreements with peer result. Yet, the general education students love Student and have an understanding of his disability makes school more challenging for him. (Testimony of TM.)

60. Information concerning these behaviors was not regularly communicated to parents. Parents were called by school staff concerning several behavioral incidents; two calls concerning Student crying in class, and two calls concerning Student crying on the playground. Parents were never asked to pick up Student from school. (Testimony of Mother, RT, and EB.)

61. During fourth grade, Student has had three different paraprofessionals assigned to work with him. These assignments have changed from day-to-day, recently, a single paraprofessional, CS, has been assigned to work with Student during the Science/Social Studies period. (Testimony of MT and CS.)

62. A functional behavioral analysis has not been completed concerning these behaviors and a behavior plan was not developed or implemented for Student to address these behaviors. (Testimony of MT, EW and RT.)

63. Student was reading at the Fountas and Pinnell Level K with 92% accuracy at the end of the first quarter but has dropped to Level J at 71% accuracy at the time of the hearing. His reading rate was 35 wpm (an increase of 9 wpm) has remained consistent. He has mastered 151 of the 181 Dolch Words. In math, Student is able to identify 2-3-digit numbers and identify place value with 85% accuracy. He is able to solve addition and subtraction problem within 15 using drawings, objects and counting with teacher support and modeling. Student is continuing to gain fluency with basic addition and subtraction facts within 15 and has begun working with multiplication facts 0 to 5. In writing, Student uses a word-processor to remain on task independently for 15-17 minutes. Using a word-processor, Student's written work product averages 20 words independently and 30 words with support. Using text-to-speech software Student is able to compose 40-50 words. Student can apply the mini-lessons with one-to-one support. When Student is required to compose using handwriting, he produces 5-6 works. (JE 16-13 to 15.)

64. Student struggles to access grade level texts in Science and Social Studies, however, he has earned low passing grades (Ds and Cs) in his special education and general education classwork the first quarter of fourth-grade. (JE 16-11 to 12 and Testimony of TM.) Student's grades in all subject areas were based on standard classroom criteria. (Testimony of EB, testimony of MT, JE 1-35, JE 2-35, JE 3-38, and JE 6- 32.)

65. ES, Student's current occupational therapist, recently obtained a master's degree in occupational therapy. She holds NBTPC and Illinois Occupational Therapy certifications. ES has been employed by District since October 2017. District occupational therapist assigned to [REDACTED] and two other schools. (Testimony of ES.)

66. Since October, ES has been working with Student for 30 minutes per week on organizational skills, handwriting and fine motor skills. ES sees Student at the beginning of the day. Student has met the occupational therapy goals found in the February 2017 IEP. After consultation with Student's teacher, ES targeted therapy activities organizational skills, handwriting and fine motor skills. ES believes that initially Student was making progress. More recently, Student has had difficulty during the sessions, resists planned activities and ES is unable to redirect and engage in therapy. (R 2-243.) ES believes this behavior was initially triggered by Student seeing regular wide ruled paper in his folder and his belief that he will be required to use this paper. ES says that since the paper incident, Student has cried during each session since that time and has not made progress. ES uses strategies to redirect student, she models and names strategies, and encourages him to take movement breaks. ES has discussed Student's behaviors with his special education teacher and the social worker. (Testimony of ES and R 2-243 to 248.)

67. Student's handwriting deficits are poor alignment, poor formation, spacing of letter and words, and inconsistency overall. Student's fine motor deficits include visual perceptual skills, hands are shaky, and light pressure with writing utensils. (Testimony of ES.)

68. Student prefers double lined paper, an adaptive paper. Student has access to assistive technology, talk-to-text with iPad, 18-point font is used, adaptive keyboard with large letters at school. (Testimony of ES.)

69. Student continues to participate in a weekly social skills group as part of his general special education program, not as part of the IEP. There were no goals for this group in the IEP and there was no formal progress monitoring. Service log entries track content of the group meetings and discuss anecdotally Student progress. (Testimony of RT, and R 2- 232 to 249.) Pursuant to the "stay put" placement the February 8, 2017 IEP goals and services were being provided to Student as discussed above. (Testimony of RT.) Student continues to make progress on his social work goal but still requires intensive adult support in social settings. (Testimony of RT.) RT consulted with [REDACTED] speech therapist concerning to develop common language to use with Student to facilitate social skills involved during communication with peers. (Testimony of RT and R 2-243.)

70. In the middle of December 2017 Student's classroom behavior was marked by his inappropriate interactions with his peers. Student was experiencing more frustration resulting in frequent emotional breakdowns and yelling at his peers. (Testimony of RT and R2-246.) Student's IEP does not contain a speech/language goal but he participates in a weekly speech group as part of his general special education program. (Testimony of RT and R 2-232 to 249.)

71. Student continues to participate in the █████ Sustainability Club where he enjoyed working with the chickens. (Testimony of Mother.)

EVALUATIONS

Psychological Evaluations

72. During the relevant time period, Student has undergone four psychological evaluations. Two evaluations were completed by the District's psychologist, ASM. Two were completed by a private neuropsychologist, Dr. H. (R 9, JE 4, JE 10, and JE 15.)

73. District's psychologist, ASM, administered two psychological assessments of Student during the time period relevant to this decision, first in February 2016 and second in May 2017. ASM holds a bachelor's degree in psychology and a master's degree in school psychology. She holds an Illinois type 73 license and National Certification in school psychology. She is a District employee completing her 19th year as a district school psychologist. ASM is assigned to █████ and two other District elementary schools. Her responsibilities as a school psychologist are to participate in counseling, observation, multi-disciplinary teams, therapeutic service provider, classroom observation, crisis intervention, assessment/evaluation of student and participation in 504 and IEP meetings. (Testimony of ASM.)

74. Parent's private neuropsychologist, Dr. H.'s education, experience, and credentials are contained on her curriculum vitae. (P2-9.) Dr. H. works in a clinical setting, evaluating between 180 -200 children per year. As part of her evaluations of students, she may complete an observation of that student in a school setting. Often as part of these evaluations Dr. H. writes recommendations for schools. On average she participates in two-to-three IEP meetings annually. Dr. H. has a general understanding of the continuum of special education and related service that should be available to students with disabilities who require special education and related services. Dr. H. does not have direct knowledge of the services and programs available within the District. (Testimony of Dr. H.)

75. Dr. H. did not observe Student in █████ as part of either of the evaluations she completed. Dr. H. did not have any direct contact with █████ staff or personnel. Dr. H. received the records reviewed as part of her evaluation from Parents. Dr. H. understanding of Student's educational program and experience is based on her review of Student's IEP and other school records provided to her by Mother. (Testimony of Dr. H. and JE 4.)

District's 2016 Psychological Evaluation

76. During the 2015-2016 school year (2nd grade), Student's triennial evaluation and eligibility determination for special education and related services was completed in February 2016. District evaluated Student in the areas of academic, functional, developmental functional, audiology, visual therapist, occupational therapy, communication, was observed his general education and special education classrooms. Student was found eligible for special education under the disability category of developmental delay. (R 14-1 to 1-12.)

77. ASM conducted the District's 2016 psychological evaluation and report of Student. She participated in Student's triennial eligibility determination meeting in

February 2016. District's 2016 psychological evaluation components included the results of the following instruments administered to Student: Wechsler Individual Achievement Test-Third Edition (WIAT-III), the Stanford Binet Intelligence Scale-Fifth Edition (SB-V), Behavior Rating Inventory of Executive Functioning (BRIEF), Gilliam Autism Rating Scale-Revised-Third Edition (GARS-3), Vineland Adaptive Behavior Rating Scale-Second Edition (Vineland-II), and Behavior Observation of Students in Schools (BOSS). In addition, ASM reviewed Student's current grades and classroom assessments, North Suburban Vision Consultants February 15, 2016 report, District evaluations completed in May 2013, student interview, and classroom observations. (R 9.)

78. District's 2016 psychological evaluation contained a review of the private vision report from an outside provider. The report described Student's diagnosis as stated above and noted improvement in vision. The report noted that Student's visual acuity was within normal limits, but noted struggles with accommodative flexibility, residual visual spatial difficulties, difficulty processing visual information and with considerably more difficulty with crowded visual representations. The report recommended accommodations for school, including use of 18 pt. print, reducing crowding on handout through enlarging text and use of multiple pages, allowing for visual breaks, and use of a straight edge or typoscope during reading activities. (R 9-3, R 10-1 to 2, and R 14-3.)

79. Student's was assessed using the Wechsler Individual Achievement Test-Third Edition (WIAT-III). Student's skills found to be below average range in Reading (basic reading composite, word reading, pseudo word decoding, reading comprehension and oral reading fluency) and Math composite, with below average numerical operation skills. Student's early reading skills and math problem solving fell in the low range. (R 9 – 2 to 3 and R 14-4.)

80. Student's executive functioning rating scales found to be elevated in most areas by teachers. Parents and teachers completing the GARS-3 scales for Student were found to be in the very likely probability of an Autism Spectrum disorder- level 2. Students overall adaptive behavior was found to be in the low range on the Vineland-II by his special education teacher and in the below average range by parents. Communication scores were found to be in the moderately low range by teachers and below average by parents. Daily living skills were found in the low range by the teacher and in the average range by parents. Socialization skills were found to be in the low range by the teacher and in the average range by parents. (R 9- 9 to 10 and R14-5.)

81. Student's general education teacher, special education teacher and parents all reported characteristics of inattention (9/9, 9/9, 8/9) and hyperactivity/impulsivity (8/9, 7/9, 6/9) during interviews which were compared to the diagnostic criteria for Attention Deficit Hyperactivity Disorder (ADHD). (R9- 9 and R 14-5.)

82. On the SB-V, Student's full scale, nonverbal and verbal IQ, fluid reasoning, working memory and visual spatial reasoning were in the mildly delayed range. Knowledge was in the borderline delayed range. Quantitative reasoning was in the low average range. The school psychologist noted that the overall scores may be a minimal estimate of ability due to vision issues and attention. (R9-7 to 8 and R 14-6.)

83. Student's communication skills were in the moderately low range on the Vineland II with receptive skills in the low range. (R9- 10 to 11 and R 14-5.)

84. Student's strengths were noted to be processing content knowledge and viewing multi-media presentation formats. Student displays strengths in quantitative reasoning and pseudo-word decoding. Student had difficulties with Reading, Math,

Writing, executive functioning, attention, visual and auditory processing skills, communication skills and adaptive skills in school, and play and leisure time. (R 9- 12.)

85. AMS recommended a number of suggestions for team consideration such as preferential seating, verbal and nonverbal cueing, movement breaks, kinesthetic and multi-sensory learning, positive reinforcement, breakdown of tasks, phonics and flashcards, read directions, check for understanding, pre-reading for comprehension, vocabulary review, manipulatives and picture support. (R9-13 to 14.)

District's 2017 Psychological Evaluation

86. During the 2016-2017 school year, Student's was re-evaluated, and an eligibility determination conference was convened to consider Student's eligibility for special education and related services was completed in May of 2017 after Student aged out of the educational eligibility category of developmental delay. (R 34) District evaluated Student in the areas of health, academic, general intelligence, social/emotional, and motor abilities and was observed his general education and special education classrooms. Student was found eligible for special education under the disability category of other health impairment. (JE 10 and R 34-1 to 11.) ASM conducted the District's 2017 psychological evaluation and report of Student.

87. ASM participated in Student's eligibility determination meeting in May 2017. (R 34.)

88. District's 2017 psychological evaluation components included the results of the following instruments administered to Student: Wechsler Individual Achievement Test-Third Edition (WIAT-III), the Stanford Binet Intelligence Scale-Fifth Edition (SB-V), Behavior Assessment System for Children-Third Edition (BASC-3), Childhood Autism Rating Scale, Second Edition-Standard Version (CARS2-ST), Childhood Autism Rating Scale, Second Edition-Questionnaire for Parents or Caregivers (CARS2-QPC), Gilliam Autism Rating Scale-Revised-Third Edition (GARS-3), Vineland Adaptive Behavior Rating Scale-Second Edition (Vineland-III), and Behavior Observation of Students in Schools (BOSS). (JE 10.) In addition, ASM reviewed Student's current grades and classroom assessments, North Suburban Vision Consultants February 15, 2016 report, District evaluations completed in 2011 and 2013, the NorthShore University Healthcare report completed November 2016, the 2017 NorthShore University Healthcare System Medical Group report (Dr. H.'s report), previous District evaluations (2012, 2013, and 2016) student interview, and classroom observations. (JE 10- 4 to 17.)

89. Student's general intelligence was measured using the Stanford Binet Intelligence Scale-Fifth Edition. Student's full scale, nonverbal IQ, verbal IQ, working memory, and visual spatial reasoning were found to be in the mildly delayed range. Student's fluid reasoning, knowledge, visual spatial reasoning, and quantitative reasoning were found in the borderline delayed range, yet within the indexes the skills scored were spread through from the average to the moderately delayed ranges. (JE 10-17 to 20.)

90. The review of records indicates that a 2016 evaluation completed by Northshore University Healthcare at the Division of Pediatric Neurology for Developmental-behavioral concerns in November of 2016 reported IQ scores that were very different from those reported above. The review indicates that the Kaufman Brief Intelligence Test-Second Edition was given to Student. Student's composite IQ was 102 (average), Verbal 110 (average), and Matrices (102) average. Other testing included finding of average receptive language on the PPVT-IV. Progress in many areas of visual

efficiency were noted in a February 2016 report from the North Suburban Vision Consultants. This report also highlighted Students difficulty with accurate tracking ability and crowded visual presentations. (JE 10-10.)

91. Student's academic functioning was assessed using the WIAT-III. Student's basic reading, reading composite, early reading, word reading, pseudoword decoding, reading comprehension and fluency skills are in the low range. Student's spelling skills, math composite, oral discourse comprehension, and oral expression are below average. Student's oral word fluency is in the low range. His oral Students oral language composite, listening comprehension, oral language composite, and sentence repetition were in the average range. Student's receptive vocabulary was in the superior range. (R 34-3, and JE 10-2, and 10-23.) Student's 2017 Winter NWEA scores were included with found him in the 1st percentile in reading and the 9th percentile in math. (JE 10-9.)

92. Student's Fountas and Pinnell, Dolch Word, weekly math assessment scores and writing anecdotal notes were included in the assessment summary. (JE 10-4 to 9).

93. Student's teachers, AF, [REDACTED] and MT and Mother completed the Behavior Assessment System for Children-Third Edition. These behavior scales look at externalizing problems, internalizing problems, school problems, behavioral symptoms, adaptive skills composite. All scales found that Student was at risk or clinically significant in most areas assessed. None of those completing scales rated somatization, social skills, or bullying. (JE 10-20 to 21.)

94. Vineland III completed by Mother and teachers reported below average adaptive behavior, with communication, daily living skills, socialization, rated low or moderately low and all three rating motor skills as low. (JE 10- 23 to 25.)

95. Parents and teachers completed the GARS-3 scales (concerning the probability of Autism Spectrum Disorder. Student's parents' scales fall in the probably range of Autism Spectrum Disorder level one (requiring minimal support). MT, CS and AF scale fell in the very likely probability of an Autism Spectrum Disorder level two (requiring substantial support). [REDACTED] scale fell in the very likely probability of an Autism Spectrum Disorder level three (requiring very substantial support). The CARS2-ST was completed by ASM with information gathered from teacher, parent, records and observations. The overall scores fell in the mild to moderate symptoms of Autism. (JE 10-21 to 22.)

96. ADHD diagnostic criteria were review with teachers, paraprofessional, and parents. All reported inattention school staff 9/9 characteristics and parents 8/9. Characteristics of hyperactivity/impulsivity were reported as 4/9 (1 reports), 5/9 (3 reports), and 9/9 (1). (JE 10-26.)

97. Interviews of Student's Mother and teacher along with observations of Student were included as part of the assessment. During the observations the Behavior Observation of Student's in Schools was used to compare Students on task behavior with a comparison peer. Student's total on task was 35% compared to a general education peer's total on task of 75% during the first observation. During the second observation Student was on task 71% compared to the general education peer's 83% total on task behavior. (JE 10-27 to 28.)

98. AMS commented on Student's complex profiled and suggestion for team consideration such as preferential seating, verbal and nonverbal cueing, movement breaks, kinesthetic and multi-sensory learning, positive reinforcement, breakdown of

tasks, phonics and flashcards, read directions, check for understanding, pre-reading for comprehension, vocabulary review, assessment modifications, manipulatives and picture support. (R 10-31.)

Private Neuropsychological Evaluation.

99. Dr. H. completed two reports of neuropsychological assessment, one in 2017, one in January, the other in August. (JE 4 and JE 15.)

100. The January 2017 neuropsychological evaluation components included the results of the following instruments administered to Student: interviews of Student and Mother, review of records, medical, educational and development/history, the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), Woodcock-Johnson Test of Achievement, Fourth Edition, Form C, Gray Oral Reading Test-Fifth Edition (GORT-5), Test of Everyday Attention for Children, Gordon Diagnostic System, Delis-Kaplan Executive Function System Color-Word Interference Test, Delis-Kaplan Executive Function System Verbal Fluency Test, Delis-Kaplan Executive System Trail Making Test, Delis-Kaplan Executive System Tower Test, Behavior Rating Inventory of Executive Function, Comprehensive Test of Phonological Processing, California Verbal Learning Test, Children's Version, Children's Memory Scale, Grooved Pegboard, Beery VMI Developmental Tests, Sixth Edition, NEPSY Developmental Neuropsychological Assessment, Second Edition, Kaufman Assessment Battery for Children, Second Edition, Behavior Assessment System for Children, Third Edition, and Behavioral Assessment System for Children, Second Edition, Self-Report Form. (JE 4.)

101. Dr. H.'s diagnostic impression of Student is that he is a friendly, energetic youngster with reduced attention and concentration that impacts his ability to participate in tasks and causes him to require significant support and redirection. (JE 4-6.)

102. Dr. H. indicates that Student's overall cognitive abilities are difficult to categorize due to Student's variability in skills. Student's strengths include verbal reasoning, especially when information is structure to aid his retrieval. Student's weaknesses are found in the areas of visual perceptual tasks, working memory tasks, and processing speed. In addition, Student has notable vision difficulties, fine motor weakness and attention deficits. (JE 4-6.)

103. Dr. H. discussed the variable IQ scores achieved by Student in her testing and the test scores she reviewed. Dr. H. indicated that Student's full-scale IQ scores are not a good reflection of his abilities level. Student has solid verbal reasoning skills and Student's attention and visual deficits likely had a negative impact on his performance. In addition, these scores could be negatively impacted by not making progress, the type of test used and the emphasis on skills within the test used. (Testimony of Dr. H.)

104. Student required significant 1:1 support and task/directions broken down, repeated, and presented at a slowed pace in order to demonstrate his knowledge and make appropriate progress. Student's significant impairments in visual spatial reasoning, visual perception, fine motor skills, and attention have had a direct impact on his academic development. (JE 4-6.)

105. Student struggles to accurately perceive visual information at a basic level which impacts his ability to acquire reading and math skills and effectively execute fine motor output, negatively impacting his writing. Student also struggles to integrate the skills he has acquired. These struggles coupled with difficulty maintaining attention and focus limit his access to the curriculum in general. (JE 4-6.)

106. Student demonstrates strength in verbal comprehension and verbal expression when information presented to him with structure and context. He benefits from cues/prompts to aid his verbal output and requires information broken into component parts for comprehension. When information has been presented in this manner, he demonstrates solid skills. (JE 4-10.)

107. Dr. H. indicates that Student meets the criteria for Specific Learning Disabilities in Reading, Writing and Math, this diagnosis doesn't fully capture his broader profile. Dr. H. provides two diagnoses to describe Student, 1) ADHD-Combined Type, and 2) Unspecified Neurodevelopmental Disorder (capturing the visual, motor and attention deficits). (Testimony of Dr. H. and JE 4-7.)

108. Student's cognitive deficits "restrict participation in classroom activities and slow the acquisition of basic academic skills." His current progress tends to be "slow and inefficient." Student can struggle to comprehend large amounts of information or multi-step directions. Student needs this information broken down, structured and contextualized to understand task demands and access his knowledge. (JE 4-7.)

109. Student is at risk for psycho-social adjustment difficulties due to his cognitive deficits. Student struggles to communicate his thought and feeling without support. (JE 4-7.)

110. Dr. H. opines in her report that Student's "developmental trajectory is likely to continue to deviate for the more typical course, and he is likely to experience challenges both in and out of the classroom, especially as his environment continues to become more complex and abstract." (JE 4-7.) She recommends later, although [Student] does not appear to be experiencing any psychological distress at this time, these concerns place him at increased risk for psychological distress in the future and therefore should be closely monitored." (JE 4-8.)

111. Dr. H.'s recommended that Student's curriculum promotes progress "at a level that is commensurate with his overall reasoning abilities." Dr. H. further states, "the curriculum will need to be modified in content area subjects that [Student] can begin to master new concepts and information." In addition, Student will need technology and supports to address his complex needs. (JE 4-8) Dr. H. indicates that Student's reading challenges follow the pattern of dyslexia and therefore is recommending that Student is provided with a multi-sensory evidence-based reading program such as Wilson or Orton-Gillingham. Student needs "the entire curriculum modified to address his complex learning needs." The pace of instruction needs to be adjusted to Student's needs and provided in a manner that can closely monitor his efforts and frequently assess his understanding. Tasks need to be stripped down and concrete. Student will need more individualized attention, speech and language therapy to address articulation and word finding deficits, and occupational therapy to address fine motor deficits. He likely requires visual services and extended school year services to prevent regression and promote learning. (Testimony of Dr. H. and JE 4-8.) Student needs a low student/teacher ratio for success. (Testimony of Dr. H. and JE 4-11.)

112. Dr. H stressed that a typical functional academic/life skills type of educational setting is not appropriate for Student. (JE 4-8.)

August 2017 Private Neuropsychological Re-Evaluation.

113. The August 2017 neuropsychological evaluation components included the results of the following instruments administered to Student: interviews of Student and

Mother, review of records, medical, educational and development/history, the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), Woodcock-Johnson Test of Achievement, Fourth Edition, Form B, Delis-Kaplan Executive System Trail Making Test, Beery-Buktenica Developmental Test of Visual Motor Integration- Second Edition, NEPSY Developmental Neuropsychological Assessment, Second Edition, Kaufman Assessment Battery for Children, Second Edition, Behavior Assessment System for Children, Third Edition, Connors' Continuous Performance Test-Third Edition (CPT-3). (JE 15.)

114. At the time of this assessment, Student was taking Focalin to support his attention. (JE 15-1.) Dr. H. states that test scores may be an underestimate of his true ability but are likely representative of his day-to-day functioning. (JE 15-2.)

115. August assessment continued to highlight weaknesses in working memory, processing speed and logical problem solving and supported strengths in verbal reasoning skills. This testing showed improved visual spatial skills with the benefit of medication. (JE 15-2.)

116. Student continues to demonstrate significant difficulties with visual attention, poor vigilance, decreased sustained attention, and notable inattention. These findings support the ADHD diagnosis. (JE 15-2.) Impairment in visual sequencing, set-shifting, slowed processing speed, fine motor difficulties, and visual-perceptual challenges all undermine Student's performance. Overall, Student's performance was consistent with the finding contained in the January evaluations. Dr. H. did not change her recommendations for Student after this report. (JE 15-3 to 4.)

117. Both ASM and Dr. H. cautioned that Student's overall scores may be minimal estimates of ability due to vision and attention issues. (Testimony of ASM, and Dr. H.)

Visual, Motor, and Sensory/Occupational Therapy Evaluations

118. [REDACTED] holds a bachelor's degree in psychology and a master's degree in occupational therapy. She holds an Illinois occupational therapist license. [REDACTED] has been employed by the District for 16 years as a citywide occupational therapist. (Testimony of [REDACTED])

119. [REDACTED] completed Student's most recent occupational therapy reevaluation. She does not provide services to Student or to other students. (Testimony of [REDACTED].)

120. Student's occupational therapy evaluation was based on parent and staff interviews, record review, student interview, student observation, formal and informal assessments and standardized assessments including Developmental Test of Visual Perception – 3rd Edition (DTVP-3), Evaluation Tool of Children's Handwriting (ETCH), Roll Evaluation of Activities of Daily Living (REAL), Sensory Profile-2: School Companion Sensory Profile (SPSC-2). (JE 9.)

121. Student is able to access all areas of the school environment. He has been able to manage self-care in school as it relates to dressing, feeding and toileting and is supported by the outside OT reevaluation completed in January 2017. Parents report difficulty with fasteners and consistent skilled use of fork and spoon. Handwriting is difficult for Student, especially due to his vision status. Fifty percent of the letters formed by Student for the evaluation were considered legible, he had an approximation for all letters except 'v', which was omitted. Student printed with adequate spacing. On the ETCH his letter legibility within word was between 72 and 88%. Student prints with

large letters and line placement varies. He uses minimal to no spacing between words in all activities involving near or far point copying and composition. Student's handwriting speed for copying is below grade level, but visual inefficiencies would account for some of the speed deficit. His speed is faster, but not at grade level, when he is composing. Student typed 6 letters per minute for copied text. (JE 9- 7.)

122. Student uses an iPad with word prediction, text to speech and speech to text with auditory feedback and a computer with an adapted keyboard in school. (JE 9-7.)

123. Outside OT reports indicated Student shows no aversive responses to a variety of tactile, auditory, and movement sensations, but he has decreased body awareness, movement in space, and decreased bilateral coordination skills. SPSC-2 revealed that Student has decreased registration of inputs (the amount that a child notices or misses cues) that require external supports (teacher reminders) and avoidance behaviors that serve to keep away stimuli. Classroom observations did not reveal sensory processing that was interfering with learning. (JE 9 – 8.)

Vision and Hearing.

124. Student passed his hearing screening and was given an audiological and central auditory processing (CAP) evaluation. Student was found to have normal peripheral hearing sensitivity and normal middle ear function in both ears. His performance on the degraded speech tasks taxing auditory closure and discrimination skills, pitch perception and auditory temporal patterning tasks taxing interhemispheric function. Student's mixed performance on dichotic listening tasks taxing auditory binaural integration/separation skills were good/adequate. Student had difficulty on auditory attention tasks taxing selective attention and sustained auditory attention with total error scores and auditory vigilance decrement scores outside of normal limits and consistent with scores of at risk for attention deficit disorder same age peers. The report notes that Student's difficulty with auditory attention skills may impact his ability to stay auditorily focused and executive functioning skills in school. (R 14-3 to 4.)

Social Work Evaluations.

125. ■■■ conducted the District's 2016 social work evaluation and report of Student. She participated in Student's triennial eligibility determination meeting in February 2016. District's 2016 social work evaluation components included the review of Student's current grades, a student interview, and school and classroom observations. (R 13.)

126. Student is friendly and has friends at school. Student engages with his friends during lunch and recess. Student has difficulty with reciprocal social communications (turn taking and listening to responses) and personal space/boundaries with peers and requires adult prompting and cues for successful communication. He is verbal and can express himself. Student engages in sensory seeking behaviors including inappropriate touching of his face and pants. Student is easily distracted. (Testimony of RT, R 13-2 and R 14-6.)

127. Student enjoys school, especially content area classes (*i.e. Science and Social Studies*). He finds math the hardest subject. (R 13-2.)

128. Student was observed to engage in appropriate social interactions with a peer during lunch, demonstrating reciprocal communication, making silly noises while peer talked laughing and joking with peers. (R 13-3.) RT reported at the eligibility meeting that socially Student interacts with his peers differently than his peers interact with one another. (R14-5.)

129. ■ concluded that Student's adaptive behavior is below grade level. He struggles with independent and executive functioning. At times, Student struggles with emotional regulation. ■ recommended that Student receive social work services stating that he benefits from prompts and cues in social, academic and independent functioning situations. Student benefits from frequent check-ins, breaks as needed, and small group settings. (R 13-3 and R 14-5.)

130. ■ conducted the District's 2017 social work evaluation and report of Student. She participated in Student's triennial eligibility determination meeting on May 30, 2017. District's 2016 social work evaluation components included a records review, interviews with teacher with special education and general education teachers and paraprofessional, a parent interview, a student interview. (JE 7.)

131. Student is a pleasant, friendly, and kind student. He tries to engage others and likes to tell jokes. Student is having difficulty in his relationships with peers. He frequently is upset during lunch and recess. Student becomes fixated on negative experiences and emotions and has difficulty becoming regulated again. Student is resistant to changes in his routines and reacts emotionally requiring constant prompting and cuing. Student struggles to focus and remain on task and has difficulty initiating work. He requires frequent redirection through prompting and cuing to complete work tasks. He is having difficulty adhering to the social norms of the classroom, demonstrated by walking around and interrupting the lesson. Student is less fidgety and has better attention since starting medication. He is now able to carry out first-then directives. (JE 7-2 to 3.)

132. Mother finds Student cheerful and charming. At home, Student spends time with his family, interacts with his older brothers and the family pets. Student enjoys playing soccer, is interested in Thomas the Train, Star Wars, Doctor Who and Lego. Student loves animals. Student is working on "handling things" when he doesn't get his way. Mother is concerned that the curriculum is not focused on his needs and that he was not making progress in fall. Now, Student is using a more multi-sensory approach and is experiencing more success. He is starting to enjoy math. Mother observes that Student is friendly with people and is good at making friends with grown-ups. Student is good with technology and is persistent in getting what he wants. (JE 7-3 to 5.)

133. Student loves coming to school to see the chickens. He also likes Social Studies and Science. Student describes himself as funny, friendly, and super crazy. He needs to concentrate on work, but he needs reminders to stay on task. (JE 7-4.)

134. Student needs prompting and cuing to follow basic directions, classroom and school routines (such as not talking in the hall and walking on the right). He struggles with peer conversations and seeks out adults for conversation. Student demonstrates impulsivity, resists change in routine and is socially immature. Student is able to reset and regulate when upset if given prompts and cues. Student need and benefits from breaks and reinforcers. Student needs 1:1 support throughout his school day. Student has difficulty expressing himself and using correct verb tenses. Student starts each day positive and eager. By the end of the day, he is less engaged and eager to do things. (JE 7- 4 to 5 and R 34-4.)

Communication Evaluation.

135. In 2016, as part of the District triennial re-evaluation of Student was given the Expressive Vocabulary Test- 2, and the CELF-5th Edition. The report contained in the Eligibility Conference Report (R14-6) indicates that Student struggled to attend to the subtests and was easily distracted. (R 14-6.)

136. Student's expressive vocabulary and word finding was average. His receptive language was below average, and his expressive language score was slightly below average. (R 14-6.)

137. The author of the report opines that despite the slightly below average score language scores, there is currently no negative academic impact. Student was able to appropriately answer questions and provide details when speaking and answering questions. He has developed strategies to compensate and uses them effectively in sessions and independently on occasions. School-based support of MTSS was recommended for pragmatic language support. (R 14-6.)

June 14, 2017 Meeting and IEP

138. An IEP meeting was convened on June 14, 2017 at ██████ to develop an IEP for Student. Participating in the meeting were Mother, Father, EC³, AF, EB, JM, ASM, and ██████ CP, CS and attorneys for the parents and District. (Testimony of Mother, EC, AF, EB, JM, ASM, ██████, CP, CS and JE 11- 1 to 2.)

139. Parents requested that ██████, students then current mathematics teacher, be included on the IEP team. (Testimony of Mother.) ██████ did not attend that meeting. He submitted a written report which was read at the meeting. The District IEP team provided written and oral reports of Student's progress and current performance at the meeting. (Testimony of Mother, and ██████)

140. The team reported on Student's academic, behavioral and social/emotional status. The team stressed the widening gap between Student and his peers and his increased frustration and crying in school. (Testimony of AF, CS, ██████ ASM, EC, CP and EB.)

141. The team developed goals for Reading, Mathematics, Writing, Science, Social Studies, Social Work and Occupational Therapy, each to be provided as direct service in a separate setting to due the need for a significantly modified curriculum. (Testimony of AF, EB, ██████ JM and JE 11- 21 to 26, 40.)

142. Related service goals were developed for Social/Emotional and Independent Functioning. (JE 11- 27 to -29, 36 to 37.) The social/emotional goal focused on self-rating of personal social behaviors and the reactions of others. The independent functioning goal focused on completing his morning routines independently

³ EC, the ██████ case manager, holds a bachelor's degree in Education and a master's degree in school and community counseling. She currently is licensed in Illinois with an Educators type 3 and type 73. EC has employed by District for 20 years. She as served as counselor and case manager at ██████ for the past seven (7) years. EC is not certified in special education, has not taught special education. She has never taught or observed Student in a classroom academic setting. EC has observed Student while supervising lunch and recess. She has been involved with Student to support him in regaining regulation.

143. Parents requested an OT goal to address Student's deficits in handwriting. District response was that Student could use assistive technology with word prediction software, so he didn't need a handwriting goal. (Testimony of Mother, and JM.)

144. The Science and Social Studies goal reports of Present Levels of Academic and Functional Performance contains conflicting and contradicting information concerning Student's ability to access the grade-level curriculum, his ability to work with his peer and complete grade-level work. These sections reported that he is able to access a "significantly modified third-grade" curriculum with modifications and assistance from his general education teacher and paraprofessional and is "able to complete grade-level work, with support, to demonstrate his knowledge of content learned." The Functional Performance section then contradicts this stating that he completes "modified grade-level work" and describes difficulties working with peers in small groups. (JE 11-30.)

145. The focus of the Science goal is the use a variety of nonfiction sources and various note taking strategies (guided notes, jots, paraphrasing) and assistive technology, including speech-to-text and work-processing software to understand the processes of scientific inquiry. (JE 11 -30-31.)

146. The Social Studies goal provides for "nonfiction text at his reading level" and the use of a graphic organizer to identify key information to demonstrate knowledge of fourth grade social studies topics (states in the United States, ancient Egypt, and United States colonies). (JE 6-32.)

147. The District IEP team recommended that Student receive direct special education services in the general education classroom for science and social studies (75 minutes per week each) and direct special education services in a separate class setting in Language Arts/English/Reading, Mathematics, and Writing for the 2016-2017 school year stating as rationale for restrictiveness of the overall placement that Student needs a lower student-teacher ratio and small structured setting. (JE 11-38.)

148. The District IEP team recommended that Student be removed from general education classes for all content areas (English/Language Arts, Mathematics, Science, Social Sciences, and Writing) and provided direct special education services in a separate class setting for the 2017-2018 school year stating as the rationale for the level of restrictiveness the next less restrictive option was attempted and found not sufficient or appropriate to meet his academic and behavioral/emotional needs, in addition to restating that Student needs a lower student-teacher ratio and small structured setting. (JE 11-40 to 41.)

149. The IEP states that Student will be graded on work produced by him or a scribe and based on being provided all applicable accommodations and modifications. (JE 11 -42.)

150. The IEP states that Student will follow a modified promotion criterion, being achieving at or above the 1st percentile in both reading and math on standardized assessments and a cumulative "C" of above in reading, writing and math. (JE 11-42.)

151. The IEP also provides for six (6) weeks of Extended School Year services for the 2016-2017 summer session for goals in English/Language Arts, Mathematics and Writing. This was a conditional offer based on whether Student met her June goal/benchmarks in his IEP (JE 11-43.)

152. The rationale statements in the IEP stated in boilerplate fashion. The rejected options for both school years were rejected because they were determined not appropriate to meet academic, behavioral/emotional needs, did not provide enough support/services to meet needs and Student needs lower student-to-teacher ratio and small

structure setting. The 2017-2018 school year rationale section states that the 21-60% special education, which was adopted without change for the remainder of the 2016-2017 school year, was attempted and found not sufficient, despite Student's passing grades and progress on IEP goals and benchmarks. No options were discussed and rejected as too restrictive. In addition, the potential harmful effects, i.e. lack of role models, stigmatization and isolations were used by the team members to justify the move to the [REDACTED] and were listed as harmful effect of both the then current placement and the [REDACTED] proposed. (Testimony AF, EB, EC, RT, CP, CS, and ES, JE 11-39 and 41.) Parents were told at the end of the meeting that Student would be placed in a District [REDACTED] in a different school. (Testimony of Mother.)

153. The Parents voiced their disagreement with the OT goals which did nothing to address his deficits in writing, the restrictiveness of the propose program, the decision to move Student to a different school. Parents requested that other things were tried before changing Student's placement, such as co-teaching, a dedicated aid, and use of a multi-sensory teaching method. The team refused to discuss these options. (Testimony of Mother and JE 12.)

154. The team did not consider the recommendations of the outside neuropsychological or occupational therapy evaluations. The IEP does not contain any discussion of OT, sensory or motor, visual perceptual, speech/language, use of additional assistive technology to allow student to access grade level text through audio or audio/visual software or reader support, increasing paraprofessional support, or use of a dedicated paraprofessional for academic, sensory, written work and behavioral supports. (Testimony of Mother, AF, EB, and [REDACTED], and JE 11.)

155. The District team members expressed concern about the amount of supports that were necessary for order to allow Student to access the curriculum at [REDACTED]. The team discussed Student's need for significant modifications of the curriculum and the ability of [REDACTED] staff to continue to meet Student's needs. The team indicated that they did not believe the [REDACTED] to be an appropriate LRE for Student. The team discussed the possibility of placing Student in what the District calls a [REDACTED]

[REDACTED] The team indicated that this type of placement was necessary to meet Student's needs and that [REDACTED] did not have the ability to meet his needs. (Testimony of Mother, AF, EB, RT, and CS.)

156. District team members discussed the propose placement in a District [REDACTED] with the District Representative prior to the IEP meeting. (Testimony of AF, EB, RT, and CS.)

157. Parents stated that they believed that given the current level of supports and services Student was making meaningful progress and access the [REDACTED] curriculum through the December 2016 IEP and with new medication as demonstrated Students progressing five (5) reading levels within three (3) months and improving his NWEA scores. Parents believe that the restrictiveness of the proposed placement will cause Student harm emotionally, socially and academically. (Testimony of Mother and JE 12.)

158. The District's June 8, 2017 IEP offer to Student was direct special education service in special education setting for 450 minutes per week ("MPW") for Language Arts, 300 mpw Mathematics, 300 mpw Writing, 300 mpw Science, 300 mpw Social Studies, 15 mpw Social Work, 50 mpw Independent Functioning, 30 mpw Occupational Therapy. The District offer also included consultation service for the Occupational Therapist and special education teacher 30 minutes per month, the social

worker and special education teacher 15 minutes per month, and nurse to special education teacher 15 minutes per quarter. This IEP provides for the following assistive technology to be utilized by Student: adaptive writing surface, seat cushions, visual schedule, word prediction software, auditory discrimination software, noise cancelling headphones, and modified paper. Classroom accommodations included verbal directions clearly stated, preferential seating, checks for comprehension, sentence starters, gaining attention prior to speaking, encouragement of salient feature descriptions, recast statements in grammatically correct form, provide a warning of when he will be called on to allow him to formulate an answer, use of noise-cancelling headphones during loud activities, allow and encourage the use of chewies, redirect chewing on inappropriate/unhealthy items, reduce crowding on handouts by enlarging to at least 18 pt. font, visual breaks, use of straight edge or typo scope when reading, breakdown and repeat multi-step directions, prompts and cues, use a variety of writing utensils/materials, use dictation and/or scribe/dictation, handwriting checklist/editor's checklist for written work, provide a copy of the teachers' notes when appropriate, provide extra examples when teaching new vocabulary/concepts, extended time for completion of class assignments, personal space and boundaries prompts and cues, encourage student to identify communication partner's feelings during communication breakdown, breaks as needed, and modeling for peer interactions. The District's proposed IEP indicates paraprofessional support for 15 minutes per day in Language Arts but does not indicate if this is a shared or dedicated support, 60 minutes per week in Exploratory dedicated, 90 minutes per day for Science and Social Studies but does not indicate if this is dedicated or shared support. (JE 11-9 to 12.) Student was to be given a wide range of assessment accommodations and modifications in English Language Arts, Mathematics, Science, Social Studies, and Writing, as well, including individual administration, in a separate location with minimal distractions, tests read orally, magnify print, scribe to record, extended time between 10 to 25 percent, and allow one to three stop the clock breaks. (JE 11-19 to 20.) Student was to participate classroom assessments with accommodations/modifications in all areas. (JE 11-20.) Student was to participate in District and State assessments in the areas of World Language, Art, Music, Computer/Technology without accommodations/modifications. Student was to participate in District and State assessments in the areas of Language Arts/English/Reading, Mathematics, Biological & Physical Sciences and Social Studies with standard accommodations. (JE 11-20.)

159. At the end of June 2017, Parents received a placement letter stating that Student was assigned placement in the [REDACTED] Parent researched [REDACTED] by accessing the District website and learned that the [REDACTED] program at [REDACTED] was designed to serve students with mild and moderate cognitive impairments. Mother made an appointment to meet with the principal of [REDACTED] in mid-August. The principal confirmed that the [REDACTED] design as stated on the website. Principal told Mother that the [REDACTED] used the Unique Learning System's high interest-low level reading program and based on Mother's representations of Student's abilities that Student would be one of the highest functioning students in the [REDACTED] [REDACTED] Principal indicated that students in the [REDACTED] participate in the general education setting during specials and lunch. (Testimony of Mother.)

160. Parents filed DPCN evoking stay put on August 30, 2017. (IHO Exhibit 1.)

161. School staff is instructed to implement the February 8, 2017 IEP as written. (Testimony of Testimony of AF, EW, EB, MT, ■■■, and CS.)

Wilson Reading Program

162. Wilson is a multi-tiered reading program. It has twelve (12) books which are divided into steps. Each step has skills developed based on task analysis. Wilson students must meet the standard for each component of each step of each book before they move on to the next level book. There are nine (9) components. The first level is heavily phonics based, providing intensive instruction and practice in letter sounds, writing, single words, CVC (consonant-vowel-consonant) words, short vowel words, word families are memorized. Later levels work with listening comprehension, reading comprehension and writing. The Wilson program uses a multi-sensory system using the eyes, ears, hand and arm muscles during individual lessons. The Wilson program protocol recommends that students in the program receive 270 minutes per week of Wilson instruction. (Testimony of ■■■ and AR.)

163. The District has a ■■■ that implements the Wilson Reading System. Students placed in this program are if they are student with specific learning disabilities in reading and have an IQ over 80 and a profile of dyslexia and their IEP requires Wilson services. (Testimony of AP⁴.)

164. Wilson program recommends that students receive 45-90 minutes per day instruction if delivered in a small group setting and three to five hours per week if delivered on an individual basis. It has a strong focus on decoding, a remedial strategy for reading instruction. Wilson is research based. Wilson is similar to Orton-Gillingham in its methods and approach. (Testimony of AP.)

■■■ Curriculum

165. The ■■■ curriculum in reading/language arts and mathematics are researched based. Math Trailblazers is the math curriculum used at ■■■ Reading is a literacy-based reading approach that teaches reading strategies based upon the research of a variety of reading experts. The writing program at ■■■ is founded on the research of Lucy Calkins, Ralph Fletcher and Nancie Atwell. All teaching at ■■■ is differentiated using research-based methodology for all students in all areas to allow all students to scaffold their knowledge and grow. ■■■ does not have any Wilson certified teachers on its staff. (Testimony of CP.)

166. The IEP team members making the recommendation for the ■■■ ■■■ did not know the details of ■■■ placements. They were working from and inaccurate or incomplete understanding of the ■■■. The team members were operating on the understanding that the number of minutes of direct special education and related services is the factor (or the “LRE grid determination) that

⁴ ■■■ a District Special Education Administrator, holds a bachelor’s degree in communication and a master’s degree in special education (just completed in June). She is LBS 1 and 2 certified in Illinois. ■■■ holds a Wilson Level 1 certification and is working on Wilson Level 2 certification at the time of hearing. ■■■ has been employed by the District for seven and a half years. She began her current position this year. In her position, ■■■ supports the schools in network 2 and coordinates multi-sensory programs citywide. In her position ■■■ visits and observes special education programs, including ■■■ in network 2. ■■■ is a network 2 school. (Testimony of ■■■)

drives the placement decision and makes the provision of the June 8, 2017 IEP for Student at [REDACTED] and impossibility. Further, the IEP team did not know the program design for the [REDACTED] that the District would eventually assign as Student's "placement." (Testimony of AF, EB, [REDACTED], JM, CS, CP and ASM.)

[REDACTED]

167. District [REDACTED] are designed to meet the needs of students with IEPs that provide for direct special education instruction in a separate setting in all academics and require significant modifications of the curriculum. Typically, [REDACTED] participate in general education for lunch, recess, exploratory and P.E. unless inappropriate and specified in their IEP. These programs are age level divisions, typically pre-school, elementary and intermediate, etc. (Testimony of [REDACTED])

168. [REDACTED] is an intermediate class for students with mild to moderate cognitive impairment and significant functional needs. AP observed the class Student was assigned to for the hearing. There are twelve students in the class with 2 class paraprofessionals and one 1:1 paraprofessional. The maximum enrollment for this class is thirteen. This [REDACTED] is designed to m (Testimony of [REDACTED])

Analysis and Conclusions Of Law

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

Issue One: Whether the District predetermined the June 2017 IEP for Student, denying Parents meaningful participation in the IEP meeting, which resulted in a denial of a free appropriate public education to Student?

Parental Participation- Meaningful participation

The IDEA guarantees the rights of parents to participate in, and receive notice of meetings concerning the identification, evaluation, and educational placement of the child and the provision of a FAPE to the child. 20 U.S.C. §1414(e), 34 C.F.R. §300.300, 34 C.F.R. §300.321, 34 C.F.R. §300.321, and 34 C.F.R. §300.501. Parents are required team members and districts must assure their participation in IEP teams. 34 C.F.R. §300.321(a). The IDEA assures that parents are active participants with a meaningful role in the development or modification of their child's IEP. *Hjortness v. Neenah Joint Sch. Dist.*, 507 F.3d 1060, 107 LRP 65900, 48 IDELR 119 (7th Cir. 2007). Predetermination may be the type of procedural defect that deprives a child of a FAPE. *M.B. v. Hamilton Southeastern Schools*, 668 F.3d 851, 861 (7th Cir. 2011).

Parents allege the District predetermined the outcome of the June 8, 2017 IEP for Student and denied Parents meaningful participation in the IEP meeting which resulted in a denial of a free appropriate public education to Student. Parents assert that the District staff, after meeting before the IEP meeting to discuss Student's placement with a District Administrator decided that Student's IEP placement would be in the [REDACTED]

The District asserts that the team meeting before the IEP meeting to discuss potential placements for students is allowable.

The team members must enter the IEP with an open mind and meaningfully consider the parents' input. *T.P. v. Mamaroneck Union Free Sch. Dist.*, 151 IDELR 176 (2d Cir. 2009). *R.L. and S.L. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11th Cir. 2014). District asserts that is what the IEP team did. District asserts that team members concern for Student and genuine concern about the amount of supports that were necessary for Student to access the curriculum at ██████ support their position that the team members had open minds. (FF 156.) District asserts that the team also considered several placement options can overcome a claim of predetermination. *A.E. v Westport Bd. of Educ.*, 46 IDELR 277 (D. Conn. 2006), *aff'd*, 48 IDELR 270 (2d Cir. 2007, *unpublished*). None of the team members recalled in any detail discussions of the options considered and the IEP did not contain notes or other narrative summarizing the discussions held during the IEP meeting. At the end of the meeting, Parents were told that the placement would be at a ██████. (FF 153.)

Parent assert that during the IEP meeting, despite their objections, the team did not consider or discuss the additional supports they requested when objecting to the restrictiveness of the proposed change in placement to a District ██████. Parents' assert that the District ignored the findings and recommendations of Dr. H in her neurological testing of Student. Parents' assert that the District ignored the report and recommendations of their outside occupational therapist report.

The District asserts that the team discussed Student's need for significant modifications of the curriculum and the ability of ██████ staff to continue to meet Student's needs. The team indicated that they did not believe the ██████ to be an appropriate LRE for Student. The team discussed the Student's need for more support in a program wherein he would receive special education and related services through significantly modified curriculum. District asserts that the IEP and placement recommendation made at the June 8, 2017 IEP meeting were the result of thorough discussion of the team, and that the decisions were not predetermined.

The Seventh Circuit Court looks at several factors when it considers claims of predetermination. The Court considers whether the IEP team was willing to make adjustments to Students' IEP based upon input from Student's parents? It looks to see if the team gave consideration of Parents' outside reports. *M.B. v. Hamilton Southeastern Schools*, 668 F.3d 851, 861 (7th Cir. 2011). Documentation of discussions contained in a 32-page conference summary report of the meeting at which a comprehensive review of the student and IEP were held convince the Court that the District had not predetermined the outcome of the IEP meeting. *Bd. of Educ. v. Ross*, 486 F.3d 267, 275 (7th Cir. 2007).

Here, the IEP team reviewed the Student's reviewed Student's recent performance in academics and social/emotion status and stress that "the gap is widening." (FF 141.) The team expressed concerns about the amount of support Student required and stated that his needs could not be met at ██████ in the next school year. (FF 156.) The team did not consider the recommendations of the outside neuropsychological report or the occupational therapy report provided by the parents. (FF 155.) Parents disagreed with OT goals, requested specific supports and increased services which were not considered or discussed. (FF 154.) Parents pointed to the progress that Student was making and their concern about the restrictiveness of the proposed change. (FF 158.) There was no meaningful consideration or discussion of parents concerns or requests. While the IEP which was 42 pages in length, was completely void of notes summarizing the discussion

of the concerns and request made by the Parents and the options considered for Student with the reasons each option was rejected. Despite the length of the document, it was not thorough or comprehensive in memorializing the placement discussions during the meeting and does not substantiate the District's claim that the team did not predetermine the outcome of the IEP meeting.

Parents were allowed to speak at the meeting, however, the District team did not approach the meeting with an open mind, did not consider their concerns or suggestions and predetermined that the outcome of the meeting would be a change of placement for Student. As a result, I find that the Parents met their burden of persuasion concerning their allegations that they were denied their right to meaningful participation in the educational decision making for Student.

Retaliation Allegation

Parents' due process complaint asserts that the decision to transfer Student to a new school and increase his level of restriction was in retaliation to Parents advocating for Student and hiring an attorney to advocate for ██████ resulting in a violation of the Americans with Disabilities Act or ADA (28 C.F.R. §36.206). With respect to this allegation, Parents are seeking a finding that the District engaged in retaliatory action against the family throughout the period from August 2015 to present.

This hearing officer first notes that she does not have jurisdiction over the ADA claims, but does have jurisdiction to address whether Student was denied a FAPE under the IDEA as a result of retaliatory acts of the District. At the hearing, Parents failed to present any evidence, testimony or documentary, in support the retaliation allegations they raised in the due process request. Accordingly, I find that the Parents did not meet their burden of persuasion concerning their allegations of retaliation.

Issue Four: Whether, from August 2015 to present, the District's method of teaching in the self-contained classroom during the subjects of reading, writing, and math were appropriate given Student's needs to provide him with a free appropriate public education?⁵

Parents assert that Student needs a research based, multi-sensory, systematic remedial services. In support of their position, Parents point to ██████ provision of Wilson services through after school tutoring during the 2015-16 and 2016-17 school years, the references to Wilson and Student's progress noted in association with those method contained in several IEPs, and Dr. H's diagnosis of Specific Learning Disability and recommendation for the use of a "individualized multi-sensory math, reading and writing instruction and student's progress during over the summer while participating in tutoring services using the Orton-Gillingham Multi-Sensory Approach to Reading as evidence that it was necessary for Student to receive a FAPE.

District responds that determination of this issue turns on the answer to whether the IEP was appropriately ambitious in light of his unique circumstances and whether

⁵ The hearing officer has elected to change the sequence of the issues to aid in the analysis of the issues at hand.

Student made more than just trivial progress under the District's IEP. District asserts that Student's IEPs were appropriately ambitious for Student and that he made appropriate progress.

Students with disabilities found eligible under the IDEA for special education and related services receive those services under an Individualized Educational Plan or IEP. This plan is a written document created by the District IEP team and Parents. It outlines the

the student's educational program and must include essential components and it may include specific methodologies. 20 U.S.C. 1414(d)(1)(A)(i); 34 C.F.R. § 300.320(a). If the team finds that the specific instructional methods are necessary for the student to receive FAPE, the IEP should specify the instructional methods. 71 Fed. Reg. 46,665 (2006).

If a particular methodology is necessary student's education, it must be in the IEP. Federal Register, Vol. 64, No. 48 (March 12, 1999), at pp. 12552 and 12595. When determining whether an IEP design is reasonable, the determination must be made on what the District knew or could reasonably have known at the time the IEP was drafted. *M.B. v. Hamilton Southeastern Schools*, 668 F.3d 851, 863 (7th Cir. 2011).

Parents argue that the District failed to identify or recognize [REDACTED] learning disabilities in reading, writing and math and as a result, did not provide him with reading, writing and math curriculum and methodology he needed to meet his needs.

Student has a very complex profile. Due to this complexity, Student's needs slowly are being uncovered with each new evaluation. In 2015, Student was a second-grade student receiving special education and related services in reading, writing and math. (FF 6.) Student participated in the [REDACTED] reading/language arts curriculum in a general education class receiving "push-in" special education instruction and special education "pull-out" services as well. (FF 6.) [REDACTED] reading curriculum is literacy-based and differentiated instruction is available to all students. [REDACTED] math curriculum is research-based and manipulatives and other concretes were used with Students in math. (FF 33, 166.) Student received the both individual and group instruction in both his general education and special education classroom. Student was struggling to acquire basic reading, writing and math skills, but was earning passing grades and making progress on his IEP goals. (FF 11-14, 16.)

In 2016, Student's educational needs were identified through a re-evaluation completed by the District. Student had significant vision problems which negatively impacted his visual spatial skills and caused visual processing problems. (FF 79.) Student was found to have executive functioning and attention deficits. (FF 81, 82.) Student's cognitive abilities were found to be in the mildly delayed range. (FF 83.) The psychologist also included scores from previous evaluations provided by outside providers. These assessments, completed in 2011 and 2013 yielded much higher IQ scores and concluded that Student had superior verbal reasoning skills, and demonstrated age-appropriate expressive and receptive language skills. The report noted that Student had significant deficits in non-verbal reasoning, with spatial reasoning, inductive and deductive reasoning, and visual motor skills were in the borderline range. No learning disabilities were noted or suspected at that time. There were no requests for

In third grade, Student continued to receive special education services in reading/language arts in both general and special education setting, and math and writing in special education setting only. (FF 33.) Student made progress on his IEP goals and report card grades. (FF 35.) Student progressed from a level E to level J in the Fountas and Pinnell assessments over the year. (FF 37.) According to the Fountas and Pinnell

spacing chart E to J represents one year's growth. (R 43-3.) Student also increased his sight word vocabulary, reading comprehension and accuracy. (FF 37.) Similarly, Student demonstrated growth in math skills and writing. Student was acquiring numeration skills and concepts, learning basic operations, basic facts, money, graphing and basic algebra (number sentences and equalities). (FF 38.) Student gained spelling, grammar, and composition skills as well. (FF 40.) Student's performance was below that of his age-grade peers, but he was making progress in all three areas.

In third grade, Student participated in private tutoring after school with [REDACTED], one of his special education teachers, who was taking Wilson certification training. [REDACTED] believes that Student benefitted from the tutoring but did not recommend it as a methodology and it was not made part of Student's IEP. [REDACTED] also believes that the [REDACTED] comprehension component was stronger than the Wilson comprehension components. (FF 7-9.)

In fourth grade, Student continued to make progress in reading, writing and math. As in the years before, Student received special education in reading/Language Arts in both general education and special education settings. (FF 56.) Student is moving between Level J and K on the Fountas and Pinnell assessments, his accuracy rate and reading rate has remained consistent. He has mastered most of the Dolch sight words. Student is working to master his basic math facts, working with numeration and place value and developing problem solving strategies in Math. He is writing using a word processor, word processing with word prediction software and handwriting. His composition production is increasing in each of these modes. (FF 63.)

In January 2017, Student was evaluated by Dr. H. (FF 100 – 103.) Dr. H confirmed Student's complex profile. Dr. H. diagnosed Student with a Specific Learning Disability in Reading, Writing, and Mathematics. She recommended that Student be given reading instruction in a multi-sensory evidence-based reading program. (FF 108.) As stated above, the IEP team did not consider this recommendation. The team also failed to consider ASM's recommendation for multi-sensory instruction found her evaluation report. The June 14, 2017 IEP does not provide for instruction using a multi-sensory instructional approach as recommended by both the District and private psychologist. (FF 99 and 112.)

Parents argued and it the argument is plausible, that the District team relied heavily on the District psychologists IQ scores and determined that Student did not have the IQ required to be successful in Wilson. The evidence presented at hearing does not support that conclusion. I find that Student was making appropriate progress in the reading, writing and mathematics program provided to him by the District as evidenced by his grades, progress on IEP goals and benchmarks, and acquisition of skills. The selection of methodology is left to the District as they "have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents." *Beth B. v. Van Clay*, 282 F.3d 493, (7th Cir., 2002) *citing Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 209, 297(7th Cir. 1988). The parents do not have the right to veto the District's reasonable methodological choices. I find that the Parents did not meet their burden of persuasion concerning their allegation concerning the District's choice of methodology addressed above for the period from August 2015 to June 2017. However, the IEP team failed to consider the recommendation of both the District and private psychologist for a multi-sensory instruction program. I find that the Parents did meet their burden of persuasion concerning their allegation concerning the

District's choice of methodology addressed above for the period from June 14, 2017 to present.

Issue Three: Whether the District's June 2017 proposed placement (adding Science, Social Studies, and non-academic subjects in a self-contained classroom) is inappropriate given [REDACTED] needs?

Parents' assert that Student was able to access the third and fourth grade Science and Social Studies curriculum with modifications and assistance from his general education teacher and a paraprofessional and that removal from the general education setting for Science, Social Studies and non-academic subjects provided in the June 2017 IEP was inappropriate and not supported by the District's reports, including the IEP and grade reports.

District responds that after finding Student eligible for special education, the team discussed Student's needs in the academic setting, developed an IEP and determined the setting for IEP implementation. District asserts that its proposed placement is appropriate due to Student's need for significant modification of the general education curriculum in the areas of English Language Arts, math, science and social studies and his social needs.

Under the IDEA, school districts have an obligation to educate students with disabilities to the greatest extent appropriate with his nondisabled peers. 20 U.S.C. 1412(a)(5)(A), 34 C.F.R. §300.114(a)(2), and *Bd. of Educ. of Township High Sch. Dist. No. 211 v. Ross*, 486 F.3d 267 (7th Cir. 2007). Placement in special classes, such as "self-contained" classes, which remove students with disabilities from the regular educational environment may occur only when the nature and severity of the disability of the student is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. *Id.*

As discussed in the section above, Student has made appropriate progress in reading, writing and mathematics over the past two years. During that time, Student has participated in Science, Social Studies and Exploratory in the general education setting with accommodations and modifications. (FF 34 and FF57.) Student earned passing grades in both Science and Social Studies. (FF 35 and FF 64.) Student's IEPs did not provide for modified subject matter content, modified grading or assessments other than to accommodate his visual problems with larger text and crowding. (FF 36, JE 1-14, 15, 19, FF 64, JE 6-11, 12, 16.) Student has struggled, but has learned a lot and is accessing the curriculum. (FF58.)

At the June 14, 2017 IEP meeting, the team reported and discussed Student's progress and his recent behavioral status. (FF 141.) The team was concerned about the increasing needs of the student for modification of the curriculum and his changing emotional/behavioral needs. The team stressed that the gap was widening between Student and his peers. (FF 141.)

Dr. H., Parent's neuropsychologist, recommends a curriculum that is commensurate with his overall reasoning abilities, which are average or slightly below average. (FF 112.) Dr. H. discussed that Student's cognitive deficits impact his progress in acquisition of basic academic skills. Dr. H. recommended that large chunks of information must be broken down for Student and that the curriculum will need to be modified in content area subjects so that Student can begin to master new concepts and information. (FF 109 and 112.) Dr. H. described the gap between Student and his peers. Dr. H opined that Student's developmental trajectory is likely to continue to deviate and

that Student will likely experience challenges both in and out of the classroom. It is not occurring now. She advised close monitoring of Student's progress for signs of psychological distress. (FF 111.) Student's behavior and emotional status has changed dramatically since the evaluation. (FF 70.) The IEP team's recommendation, as it was written, is consistent with the recommendations of Dr. H. and is appropriate to meet Student's needs.

I find that due to the nature and severity of Student's disability a satisfactory education in regular education for Science and Social Studies with additional supplementary aides and services cannot be achieved. The parents have not met their burden of persuasion on this issue.

Issue Two: Whether the District's June 2017 proposed placement [REDACTED] (adding Science, Social Studies, and non-academic subjects in a self-contained classroom) is too restrictive and a violation of the IDEA's least restrictive environment provision?⁶

Parents' argue the proposed placement in the District's [REDACTED] is inappropriate and overly restrictive in light of Student's progress and performance during the 2016-2017 school year. Parents alleged the District's actions in removing Student from general education for Science and Social Studies are not supported by District grade and teacher reports that Student was able to access the third grade Science and Social Studies curriculum with modifications and assistance from his general education teacher and a paraprofessional. Parents also assert the [REDACTED] site serves students with mild and moderate cognitive disabilities and that Student, who has average verbal and nonverbal reasoning abilities, would be the highest functioning child in the intermediate [REDACTED] grades 3-5), making this proposed placement inappropriate for Student.

District's response to these allegations is that, although Student is progressing, his progress is stalling, the gap between himself and his same aged peers, both disabled and none disabled, is widening, and will continue to do so as academics become more demanding. Due to the significant modifications required to allow Student to access the curriculum in English Language Arts, math, science, and social studies, the Team found that a [REDACTED], in which his peers would also receive instruction in a significantly modified curriculum, would be most appropriate for Student.

Least Restrictive Environment:

Under the IDEA, a student with disabilities is entitled to receive a FAPE in the least restrictive environment ("LRE"). The LRE mandate requires that students with disabilities are educated with their nondisabled peers to the "greatest extent appropriate." 20 U.S.C. 1412(a)(5)(A), and 34 C.F.R. §300.114(a)(2). Removal of students with disabilities from the regular educational environment should occur only when the nature and severity of the disability of the child prevents the child from receiving a satisfactory education in the regular class with the use of supplementary aids and services. 20 U.S.C. 1412(a)(5)(A), and 34 C.F.R. §300.114(a)(2). The Illinois School Code and its implementing regulations also require the education of students with disabilities to be

educated to the maximum extent appropriate in the least restrictive environment with their nondisabled peers. 105 ILCS 5/10-22.41, 105 ILCS 5/14.8.02(d) and 23 Ill. Admin. Code §226.240. The IDEA and the Illinois School Code and their implementing regulations did not set forth a multi-step test to determine LRE. Neither has the Seventh Circuit. *Bd. of Educ. of Township High Sch. Dist. No. 211 v. Ross*, 486 F.3d 267(7th Cir. 2007) citing *Beth V. v. Van Clay*, 282 F.3d 494 (7th Cir. 2002).

The Seventh Circuit Court has determined that the LRE determination is made by answering the question; “whether the education in the conventional school is satisfactory, and, if not, whether reasonable measures could have made it so.” *Id.* Whether the Student’s education in the mainstream environment was “satisfactory” (or could be made satisfactory through reasonable measures) is the relevant inquiry. The District may change a student’s placement to a more restrictive setting if the mainstream environment was not satisfactory and could not be made so. *Id.* Challenging a student’s placement as unduly restrictive requires more than a showing that the student is obtaining some benefit from mainstream classes. See *D.W. v Milwaukee Public Sch.*, 526 F. App’x 672, 61 IDELR 32 (7th Cir. 2013, unpublished), *Bd. of Educ. of Township High Sch. Dist. No. 211 v. Ross*, 486 F.3d 267(7th Cir. 2007), and *Beth V. v. Van Clay*, 282 F.3d 494(7th Cir. 2002).

As discussed in the issue above, the District immediately above, the needs of Student have changed recently. He is experiencing the challenges she anticipated and is currently demonstrating signs of psychological distress. (FF 111 and FF 70.) IDEA does not require disabled student to fail in regular education setting before a more restrictive placement is considered. Letter to Cohen, 25 IDELR 516 (OSEP, 1996).

If a change of placement to a more restrictive environment is appropriate, the District team must consider placements that are able to provide Student with the services and supports provided for in his IEP. 34 C.F.R. §300.116(b). Unfortunately, Congress has not statutorily defined the term “educational placement” which makes identifying what is the current placement or a change in placement “something of an inexact science.” *Board of Educ. of Comm. High Sch. Dist. no 218 v. Illinois State Bd. of Educ.*, 103 F.3d 545, 548 (7th Cir. 1996). The Seventh Circuit accepts as the outer parameters of “educational placement” as meaning “something more than the actual school attended by the child and something less than the child’s ultimate educational goals.” *John M. v. Board of Educ. of Evanston township High Sch. Dist. 202*, 502 F.3d 708, 48 IDELR 177 (7th Cir. 2007).

Student requires specialized instruction and a modified curriculum to make appropriate educational progress. His IEP requires direct special education and related services in a separate setting for more than 60% of the school day. He has goals for all academic subjects with accommodations and modifications. Student’s placement provides for Exploratory, P.E., lunch and recess within the general education setting. (FF 159.) In determining what that experience was, the Court directed an evaluation of the IEP as a whole and that usually there is no need to go beyond the four corners of the IEP in order to make the determination. *Id.*

District can provide the level of supports and services Student needs pursuant to the June 14, 2017 IEP in a [REDACTED]. [REDACTED] are designed to meet the needs of students with disabilities who require significant modification of the curriculum. (FF 168.)

Parents argue that the placement offer in the [REDACTED] is too restrictive. The [REDACTED] is designed for students with mild to moderate

cognitive impairments. (FF 169.) Student’s cognitive and functional profile does not fit with the program design. Students needs will not be met in a typical functional academic/life skills program. (FF 113.)

Student’s needs an academic program with a curriculum that promotes academic skills and the acquisition of knowledge at a level commensurate with his overall reasoning abilities. (FF 113.) He needs the modified curriculum to present concept and information in conjunction with technology and supports to address his complex needs. (FF 112.) The District’s offer of placement at CES is too restrictive to meet Student’s needs. The Parents have met their burden of persuasion.

DISTRICT’S BURDEN OF PRODUCTION

The District has a statutory duty to produce evidence that it has properly identified the student’s disability needs in terms of their nature and severity, whether the student has been determined as eligible for special education and related service and that it is providing or has offered a free appropriate public education (FAPE) to the student in the least restrictive environment (LRE). 105 ILCS 5/14-8.02a(g-55).

FAPE ANALYSIS

The IDEA requires the provision of a “free appropriate public education” (“FAPE”) to all children with disabilities. *Forest Grove School District v. T.A.*, 129 S. Ct. 2484, 2492 (2009) (citing 20 U.S.C. §1412(a)(1)(A)). A FAPE is an education that is “specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child ‘to benefit’ from instruction.” *Bd. of Educ. of Murphysboro Community Unit Sch. Distr. No. 186 v. Illinois State Bd. of Educ.*, 41 F.3d 1162, 1166 (7th Cir. 1994) (quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206(1982)). A child’s “educational program must be appropriately ambitious in light of his circumstances...[E]very child should have a chance to meet challenging goals.” *Andrew F. v Douglas Cnty. Sch. Dist. R-1*, 69 IDELR 164 (2017).

The IDEA provides procedural and substantive obligations to achieve the goal of making a FAPE available to all children with disabilities. *Alex R. v Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 611 (7th Cir. 2004). To comply with the IDEA’s procedural component, a school district must follow the procedural safeguards set forth in the Act. 20 U.S.C. §1415(a). To comply with the IDEA’s substantive component, a school district must develop an individualized educational program (IEP) though those procedures that is reasonably calculated to enable the child to receive educational benefits. *Bd. of Educ. of Murphysboro Community Unit Sch. Distr. No. 186 v. Illinois State Bd. of Educ.*, 41 F.3d 1162, 1166 (7th Cir. 1994).

To determine whether a school district has complied with the IDEA a two-part inquiry must be made. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982). First, consideration must be given to whether the school district has complied with the procedures set forth in the statute. *Id.* A district’s failure to comply with the procedural requirements does not automatically require a finding of a denial of a FAPE. *Id.* If the procedural violations impeded the child’s right to a FAPE, or significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of educational benefits, then procedural violations can be held to deny a student a FAPE. 20 U.S.C. §1415(f)(3)(E)(ii)

Procedural Component

Parents assert that the District made a number of procedural violations in this matter. First, Parents assert that the District made multiple changes to Student's IEP during the 2016-2017 school year without notice, parent participation, or consent. These alleged changes included changing the number of social work support, changing the minutes and intensity of aide support, changing and adding accommodations, adding reduced work as an accommodation, adopting behavior strategies and "token" reward systems without parent support and shifting the intensity of Speech/language (non-IEP) support without notice, meetings or consent. The unilateral modification of special education services of a student outside of the IEP process and without parent input is a violation of the IDEA. *Washoe County Sch. Dist.*, 115 LRP 3790 (SEA NV 01/05/15).

The 2017-2018 service log minutes for social work indicate that RT was providing Student with 30 minutes per week of direct social work services in a group setting (FF 66.) when the IEP provided for 11 minutes per week of direct social work services. (JE 6-30.) Additional social work service minutes outside of the IEP were a unilateral change to the IEP.

Parent allege that District changed the intensity of the aide support outside of the IEP. CS testified that he was originally assigned as a shared aide serving Student and one other student. The other student no longer required service and there were no other students requiring paraprofessional support, so CS felt that he was giving Student "dedicated" aide service. This hearing officer does not find CS's testimony concerning his status as a dedicated aide for "Student" persuasive in relation to the District provision of services outside of the IEP. As a matter of staffing, CS needed to remain in the classroom with Student, even in the absence of the other student who had previously shared his services with Student. This does not constitute a unilateral change outside of the IEP.

Parent allege that District unilaterally changed Students IEP by changing and adding accommodations. EB and MT testified to modifications to readability of text, providing alternate assessment and other accommodations and modifications, including reduced work, of the curriculum that were outside of the IEP. District argues that educational decisions made by staff were done as real time decisions as part of the teaching process that had to be made in the moment and were not necessarily subject to the IEP process. Testimony from the teacher concerning the accommodations and modifications they provided to student did not provide a clear picture of modifications to the curriculum that should have been considered at an IEP meeting. The teachers repeatedly asserted that Student access the grade-level curriculum and that he was graded with standard classroom standards. (FF 35, 36 and 64.) Due to this testimony, I conclude that these were in the moment decisions made in the normal course of teaching, not unilateral changes to the IEP.

Parents allege that the District adopted behavior strategies and "token" reward systems unilaterally. CS testified about positive reinforcement, reward and classroom behavior systems and used the word "token" reward to describe a classroom behavior chart. I do not find CS, a paraprofessional, not a certified teacher or special education teacher, characterization of these items controlling. Based on his description of the tokens, I find that the "token" rewards were not specialized behavior management tools or technique that should be provided in the IEP but part of good classroom management

techniques which are hopefully found in every elementary classroom in this nation. e the types of without parent support and shifting the intensity of Speech/language (non-IEP) support without notice, meetings of consent. Due to this testimony, I conclude that these were in the moment decisions made in the normal course of teaching, not unilateral changes to the IEP.

Parents allege that the District unilaterally shifted the intensity of Speech/language (non-IEP) support without notice, meetings or consent. EC, case manager, testified that speech/language services were being provided to Student through the MTSS delivery system, as they were to all students at [REDACTED] IEP records show that this was discussed at the eligibility meeting in February 2016. (R 14-6) and service was discontinued in the March 2016 IEP (JE 1-33.) Decision made at IEP meetings are not unilateral changes.

Similarly, the District through the IEP references to Wilson services and assessments effectively provided, then ceased to provide without those services to Student outside of the IEP and without notice or consent. District made a unilateral change to the IEP related to Wilson services.

Parents allege that the District improperly directed its staff to not make any changes to any aspect of Student's IEP due to the stay put placement. District staff testified that it was their understanding that the IEP could not be changed without Parent request and that Parents would not agree to change to the IEP. (FF 51.) These instructions had a chilling effect on the [REDACTED] staff and their relationship with Parents. As a result, staff was reluctant to contact Parents. This resulted in Parents being uninformed concerning Student's progress and problems. If the parents and district had agreed, changes could have been made to Student's IEP during the pendency of the placement. 34 C.F.R. §300.518.

Parents allege that District failed to collect data required by the IEP process and failed to provide records to the parents on a timely basis after receiving the request for supplementation of the records on December 7, 2017. The hearing record reflects the District's tender to Parents service logs on December (R 2- 241 to 249.) This is a violation of the records access rights. 34 C.F.R. §300.613.

Finally, the Parents allege that District's assignment of the school site to implement Student's IEP was a procedural violation of the IDEA in that IDEA requires the "placement decision" an administrator who has knowledge of the student and did not participate in the IEP meeting. 34 C.F.R. §300.116. The Seventh Circuit accepts as the outer parameters of "educational placement" as meaning "something more than the actual school attended by the child and something less than the child's ultimate educational goals." *John M. v. Board of Educ. of Evanston Township High Sch. Dist. 202*, 502 F.3d 708, 48 IDELR 177 (7th Cir. 2007). For Student this is true, not only are the minutes and services provided on his IEP important factors to consider when selecting the program that will meet those needs, for Student, who has many varied and complex needs it is essential that all aspects of the IEP are taken into account when selecting the program for him so the services that are delivered address his needs and provide him with a FAPE. Where the District has more than one program that provide the services called for in the student's IEP, it has the discretion, subject to the factors enumerated in 34 C.F.R. §300.116. The undersigned declines to find that this is a procedural violation at this time. The CES placement was found to be a violation of LRE and that is enough to address Student's needs.

Discussion above contains numerous procedural violations. District's procedural violations discussed above, the predetermination of the June 2017 IEP outcome, the unilateral change in social work services without notice, meeting or consent, the improper instructions to staff concerning stay put and the failure to timely provide records all had the effect of denying parents right to meaningful participation in the educational decision-making for Student.

Substantive Component

A district must develop an IEP that provides a student with a disability specially designed instruction that meet his or her unique needs, regardless of whether the same instruction is provided to other children with disabilities or to children without disabilities, in the child's classroom, grade or building. *Letter to Chambers*, 59 IDELR 170 (OSEP 2012). Districts have an ongoing duty to identify the needs of students with disabilities. 34 C.F.R. §300.304(c)(4).

Student has presented with a very complex profile, including diagnoses of ADHD, vision impairments, developmental delays, and "longstanding difficulties with math and reading." (JE 4; testimony of Dr. H.) District has identified Student's needs as academic, functional, audiological, occupational therapy and communication, attention, social and behavioral. Assessments completed for eligibility determinations were completed in all areas of identified need. (FF 77, 78, and 87.) Student has demonstrated behaviors that are interfering with his access to curriculum. (FF 70.) The District has not completed a functional behavioral analysis or developed a specific behavior plan. Instead, each staff member is addressing Student's behaviors in a reactive manner, rather than addressing them as required through the use of positive behavioral interventions, support and other strategies to address behavior. 34 C.F.R. §300.324(a)(2)(i). I find that the District has failed to identify the behavioral needs of Student due to its failure to conduct a functional behavioral analysis.

FAPE should provide some educational benefit and be appropriate for the child, it is not necessary to provide the best possible education and it does not matter if the placement chosen by the parents is better. *Brad K. v. Bd. of Educ. of the City of Chicago*, 56 IDELR 197 (N.D. Ill. 2010). In addition, this does not mean a school district must furnish "every special service necessary to maximize each handicapped child's potential." *Rowley* at 199. The IEP must be reasonably calculated to provide more than trivial educational benefits and "likely to produce progress, not regression". *Alex R. v. Forestville Valley County Sch. Dist.*, 375 F.3d 603, 41 IDELR 146 (7th Cir. 2004). "Factors to consider in making such a determination include: '(1) the child's potential; (2) whether his IEPs were tailored to his unique needs; (3) whether his IEPs provided access to specialized services; (4) whether they addressed disability-related disruptive acts; and (5) whether the child achieved progress during the relevant time period.'" *Brad K. at 739, quoting Jaccari J. v. Board of Education of City of Chicago, District No. 299*, 56 IDELR 197 (N.D. Ill. 2010).

As discussed above, under the March 2, 2016 IEP, Student was making progress and acquiring skills and knowledge. He was being educated in general education and special education setting to meet his attention and vision needs. Student was appropriately challenged and properly supported. His grade and IEP reports support this conclusion.

As discussed above, the February 3, 2017 IEP Student was making progress and acquiring skills and knowledge. He was being educated in general education and special education setting to meet his attention and vision needs. Student did NOT receive needed occupational therapy services for a period of 25 weeks. (FF 44.) No compensatory services were offered to Student for this denial of a FAPE. Student was appropriately challenged and properly supported in the other academic and related services. His grade and IEP reports support this conclusion.

Next, the inquiry turns to the substance of the disputed IEP. This IEP contains all the necessary elements/components. 34 C.F.R.300.22 and 34 C.F.R. 300.320(a). To meet this substantive obligation, the school district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. v Douglas Cnty. Sch. Dist. R-1*, 69 IDELR 164 (2017). "An IEP must respond to all significant facets of the student's disability, both academic and behavioral" to meet the substantive criterion of *Rowley. Alex R. v Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 611 (7th Cir. 2004). The failure of an IEP to address a child's educational and functional needs will likely result in a denial of FAPE. *Forest Grove Sch. Dist. v T.A.*, 53 IDELR 151 (U.S. 2009).

This IEP does not address many of the student's needs identified in the District's May 2017 re-evaluations and the outside neuropsychological evaluation and the outside occupational therapy report. The June 14, 2017 IEP does not provide for instruction using a multi-sensory instructional approach as recommended by both the District and private psychologist. (FF 99 and 112.) This IEP also failed to address handwriting and fine motor deficits, visual perception and sensory needs. (FF 122,124, 105,106.) In addition, as above, it does not contain a plan to provide student with positive reinforcement of behavior.

A child that is not fully integrated in the regular classroom may not have the ability to achieve at grade level, that the IEP for that child should be "appropriately ambitious in light of his circumstances." *Andrew F. v Douglas County School District RE-1*, 69 IDELR 174 (2017). Here, the Social Studies goal is not appropriately ambitious for a student who has been able to successfully access modified grade level content in Social Studies, to require that the content is reduced to the limited level of his reading ability will result in a significant loss in opportunity to access the general education curriculum for his age/grade level.

For the reasons stated above, I find that the District failed to provide Student with a FAPE during the 2016-2017 school year and the 2017-2018 school year. I find that the disputed IEP did not offer Student a FAPE. I find that the District did not meet its burden of production with respect to the provision of a FAPE as stated above.

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 provide any occupational therapy services to Student during the period from September 16, 2016 to April 6, resulted in a failure to provide sufficient related services to address his fine motor and sensory deficits.

ORDER

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

- A. The District shall convene an IEP team for Student that includes all members of the current team and a District staff member with direct knowledge of the District's multi-sensory evidence-based programs for Student with average or above cognitive abilities.
- B. The IEP team shall convene an IEP meeting within 10 school days after the date of this order to prepare and IEP for Student that:
 1. To provide student with a multi-sensory approach comparable to Wilson or Orton-Gillingham to teaching Student in his self-contained academic subjects of Reading, Writing, and Math,
 2. To review and revise, if appropriate, Students goals in reading, writing and mathematics to address his deficits, and in accordance with the recommendations contained in the outside neuropsychological evaluation completed on January 13, 2017;
 3. To complete a functional behavioral analysis including data collection for at least a five day period, collecting data at multiple period during the day to address students behavioral, off task/attentional and sensory needs and to provide a plan of proactive and positive behavioral interventions and supports for Student;
 4. To draft a social work goal(s) that addresses Student's social/emotional deficits in a manner that is measurable and contains a provision to provide monthly provide parent with progress data and to measure progress towards attaining the goal and benchmarks at least quarterly;
 5. To provide Student with a dedicated 1:1 paraprofessional for all minutes of academic instruction without regard to setting;
 6. To provide Student with a handwriting goal;
 7. To provide Student with a goal to address and improve his decreased body awareness, movement in space, and decrease bilateral coordination skills;
 8. To provide Student with electronic noise cancelling headphones,
 9. To provide Student with a sensory diet that includes chewies;
 10. To provide Student with a daily sensory break schedule; and
 11. Modify the Social Studies goal to provide Student with access to age/grade level context and text through auditory (such as voice

recording) or auditory/visual technology (voice with visual text highlighting/tracking).

- C. The District is ordered to reimburse Parents for tutoring services rendered to Student by Chicago Home Tutoring between July 1, 2017 and the date of this order, upon submission of appropriate documentation of said tutoring services to District.
- D. The District is ordered to reimburse Parents for Occupational therapy service provided to Student for during the period from September 16, 2016 to April 6, 2017, upon submission of appropriate documentation of to the District of said OT services.

In accordance with 105 ILCS 5/14-8.02a(h), within 30 school days of receipt of this Order, the District shall submit proof of compliance to:

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

NOTICE OF RIGHT TO REQUEST CLARIFICATION

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

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: February 1, 2018

Impartial Hearing Officer

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CERTIFICATE OF SERVICE VIA EMAIL

I, the undersigned Kathleen C. Fuhrmann, certify that on February 5, 2018, a copy of FINAL DETERMINATION AND ORDER was served upon the following persons via email transmission by attached said document(s) in pdf format to the email addresses set forth below:

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

Date: February 1, 2018

Signed: _____

1163 Fawn Circle
Manteno, IL 60950
815-468-8419
KathleenFuhrmann@kfuhrmannlaw.com

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CERTIFICATE OF SERVICE VIA CERTIFIED MAIL

I, the undersigned Kathleen C. Fuhrmann, certify that on February 5, 2018, a copy of FINAL DETERMINATION AND ORDER was served upon the following persons via certified US Mail delivery by depositing the same in the United States Mail, in an envelope securely sealed, postage prepaid, return receipt requested and legibly addressed to the addresses set forth below:

[REDACTED]

[REDACTED]

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

Date: February 1, 2018

Signed: _____
1163 Fawn Circle
Manteno, IL 60950
815-468-8419
KathleenFuhrmann@kfuhrmannlaw.com

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