

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

T.C.,]	
Student,]	
]	CASE NO. 2018-0165
v.]	
]	MARY SCHWARTZ
██████████ GRADE]	Impartial Hearing Officer
SCHOOL DISTRICT ██████,]	
Local School District.]	

FINAL DECISION AND ORDER

JURISDICTION

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

PROCEDURAL BACKGROUND

The parents, through their attorneys Charles Fox and Julie Welsh of the Law Offices of Charles P. Fox, filed a due process complaint on November 13, 2017. The district is represented by Kamilah A. Parker, who is with the Law Offices of Meachum, Boyle & Trafman. The district filed its response to the parents' complaint on November 22nd. The parties had participated in mediation on October 20, 2017, before the parents' due process complaint was filed, but were unable to resolve the parents' concerns. PD 42. They requested time to engage in informal settlement discussions prior to the prehearing and thus agreed to hold the prehearing on January 3, 2018. The prehearing was held as scheduled by telephone conference call.

After the prehearing, parents' counsel emailed the hearing officer that the parents were adding an issue and remedy to their complaint. The district was given 10 days to file its response to the amended complaint. The amended issue and remedy are included in the issues/remedies identified below. On April 13, 2018 the parties jointly requested to continue the hearing to September 26th to 28th and to extend the 45-day timeline to October 15th so

that they could engage in further settlement discussions and prepare for hearing. The parties' joint motion was granted upon receipt. The final day of hearing was rescheduled, with agreement by the parties, due to an unexpected conflict in scheduling. The final hearing day was October 3rd, and written closing statements were filed on October 5th. The district, through Magna Legal Services, provided the court reporters throughout the hearing

In rendering this decision, the undersigned has considered all documents entered into evidence, testimony by the parties' witnesses, the parties' closing arguments and their proposed case law, as well as independent research.¹ This decision is issued within ten business days after the close of the record in this case on October 5, 2018. 105 ILCS 5/14-8.02b(k).

ISSUES AND REQUESTED REMEDIES

The following issues, raised in the parents' complaint, as amended, were heard during the due process hearing:

1. Whether the district failed to appropriately evaluate the student and failed to appropriately consider the independent evaluations provided by parents, which related to his learning disability;
2. Whether the district failed to develop an appropriate IEP for the student that included:
 - a. Appropriate academic instruction to address the student's learning disabilities;
 - b. Necessary methodological interventions;
 - c. Meaningful IEP goals in all areas of need; and,
 - d. Necessary related services, including speech/language therapy and occupational therapy;
3. Whether the student failed to make progress under the IEPs developed by the district and if so, whether the district failed to appropriately revised the student's IEPs;

¹ The parties' agreed-upon list of admitted exhibits is part of the record. The transcript cited in this decision references consecutive page numbers for the first two days of hearing. The transcript citations for the third day are to a page number followed by (3), indicating the third day of hearing.

4. Whether the district, for more than two years, failed to propose a placement with sufficient and appropriate academic instruction to allow the student to make appropriate academic progress;
5. If so, whether this failure directly led to the student's need for intensive, 1:1 literacy instruction delivered with the comprehensiveness and intensity that [REDACTED] provides;
6. Whether the student requires placement in a residential school, and specifically at [REDACTED] School, for school years 2017-18, 2018-19 and 2019-20, including all summers, to remedy the significant educational deficits that have resulted from the district's denials of FAPE to this student; and,
7. Whether the above-alleged failures denied the student a free appropriate public education (FAPE).

As remedies for the above-alleged denials of the student's right to receive a FAPE, the parents request an Order directing District [REDACTED] to:

1. Reimburse the parents for the student's placement at [REDACTED] for school years 2017-18 and 2018-19;
2. Place the student at [REDACTED] at District [REDACTED] expense as compensatory education for the remainder of the 2018-19 school year and for school years 2019-20, 2020-21, and 2021-22;
3. Placement at [REDACTED] will include appropriate transportation expenses for student and his family, e.g. IEP meetings and other necessary meetings, student/parent travel to home/school for breaks and family events;
4. District [REDACTED] will adopt the [REDACTED] IEP as the student's current IEP; and,
5. Compensatory education in the form of reimbursement to the parents for the expenses they have paid, including:
 - a. Tuition and transportation to [REDACTED] so far incurred;
 - b. Private speech/language therapy provided by the parents for the past three years;

- c. Private Wilson tutoring provided by the parents;
 - d. Private academic summer camp; and,
 - e. Dr. D.'s independent neuropsychological evaluation; and,
6. Order the district to provide training to its IEP team members on the topic of dyslexia so that they may learn to appropriately program for students with these needs.

FINDINGS OF FACT

1. The parents first became concerned about their son's development when he was a toddler and did not speak clearly and or talk as much as his two older sisters had at that age. PD 373. He was evaluated for Early Intervention (EI) services, found eligible for speech/language therapy, and received EI speech/language services until he transitioned to preschool. *Id.* In preschool, he was evaluated for occupational therapy services due to a teacher's concern about his fine motor skills. *Id.* He was found eligible for early childhood services and received speech/language and occupational therapy services throughout preschool. *Id.* He attended a regular education kindergarten class in the district's elementary school and received speech/language and occupational therapy as related services. *Id.* He also received pullout services for basic academic skills, e.g., letter recognition and naming, associating letters and letter sounds, and integrating sounds into words. *Id.*
2. In summer 2010, the parents had the student evaluated by an independent neuropsychologist, Dr. S., because of their concerns about his difficulty developing core academic skills and his continuing difficulty with articulation and fine motor skills. PD 372. The evaluation occurred the summer before the student entered first grade. PD 373. Dr. S. assessed the student's intellectual functioning, academic achievement, memory and new learning, social/emotional/behavioral adjustment, and other neuropsychological processes. PD 374-379. The parents and the student's teacher completed behavioral rating scales. PD 379. Based on the evaluation results, Dr. S. determined that the student had "well-developed verbal and nonverbal intellectual abilities but showed a "significant weakness" in basic reading skills, including comprehension, sight word recognition, and phonological skills. PD 380, 381. He scored between the 9th and 18th percentiles for his grade in skills relating to reading comprehension. PD 381. Dr. S. diagnosed the student with a

reading disorder, with “basic problems in phonological awareness.” *Id.* Additionally, he found that the student had difficulties in fine motor and visual motor skills. *Id.* His test performance was impacted by behavioral factors, e.g., restlessness, disorganization, and being easily distracted, indicating that he was “at risk” for a diagnosis of ADHD. PD 382. Those factors also contributed to his difficulty in developing academic skills. *Id.* Dr. S. recommended that the school evaluate the student for special education services to address his deficits in reading skills, problems in speech/oral expression, and difficulties in visual motor skills. *Id.* He also recommended that the district find the student IDEA eligible as a student with learning disabilities and provide him with “an intensive, research based, multisensory reading intervention program,” speech/language therapy, and occupational therapy services. *Id.* Dr. S.’s report includes numerous instructional strategies and accommodations and modifications to address the student’s learning needs. PD 383, 384. The student’s mother gave Dr. S’s report to the district. TR 139(3).

3. In early elementary school, the district’s reading interventions for the student included Road to Reading (3rd grade) and Road to Reading and Fountas & Pinell each for half a day, 5 days/week (4th grade). PD 486; TR 66, 67. The district does not provide Wilson, which is an “Orton Gillingham reading intervention,” to students. Mr. S., TR 424. The student was at the 1st %ile on the MAP reading in third grade. *Id.* His fourth grade NWEA reading scores ranged from the 1st % ile to 2nd % ile. PD 246; TR 425-427.
4. The district conducted a triennial re-evaluation of the student in October 2014, when he was in fifth grade. PD 274. The district uses AIMSweb Reading Curriculum-Based Measurement (AIMSweb) and NWEAmap to assess each student’s level of achievement in math, reading, and language usage. PD 340. At the time of the re-evaluation, the student was at the 1st %ile (tier 3) in overall reading progress, compared to national and district samples. PD 340; TR 55. He did not have strategies to sound out words, and his lack of decoding skills “greatly impacted” his ability to read. PD 280. His encoding deficits “significantly impacted” his spelling and ability to express himself in writing. *Id.* He relied on adults to write his answers and ideas for him. *Id.* His reading score on the PARCC, which is a state assessment, was 29, “well below” the state average of 46, the district average of 50, and the school average of 55. PD 249; TR 54, 55. The team reviewed the student’s health status and

speech/language goals and progress and conducted an occupational therapy evaluation and a classroom observation. PD 277; PD 339 No additional standardized assessments were conducted. TR 423-434. A note in the record indicates that the district reviewed Dr. S's report as part of its triennial evaluation in October 2014; however, the review was very cursory, stating that the student's cognitive skills were in average range. PD 207.

5. Ms. N.C. is an occupational therapist employed by the cooperative that services the district. TR 150, 151. She was licensed in February 2014 and began working for the cooperative in August 2014. *Id.* In October 2014, she assessed the student using the Developmental Test of Visual Perception, 3rd Edition (DTVP 3rd). PD 277; TR 154. He scored below average on both the motor and non-motor components of the DTVP 3rd, which led Ms. N.C to conclude that he had impaired visual perception rather than just a fine motor problem. *Id.*; TR 156. Although he was faster in handwriting than in keyboarding, he had problems with legibility. *Id.* His handwriting skills were "pretty low for a fifth grader" and his typing speed was "incredibly low." TR 158. Ms. N.C. recommended that he continue keyboarding instruction to lessen concerns about legibility and spacing in his hand-written work. PD 277. Ms. I., the speech/language pathologist, conducted a records review. The student had received speech services in school for syntax and articulation since kindergarten. PD 295. The parents also were providing private speech/language services. *Id.* The student's expressive and receptive vocabulary and semantic skills were within the average range. *Id.* He had difficulty producing the /R/ sound and substituted /f,s,v,d/ for the /th/ sound. *Id.* Ms. I. recommended speech services to focus on the /TH/ sound. *Id.* The district determined that the student remained IDEA eligible as a student with a specific learning disability and a speech/language impairment. PD 275.
6. Ms. G.C. was the student's regular education in fifth grade. She has a B.A. in educational studies and a M.A. in elementary education. TR 376. The district was her first employer. *Id.* Although the student's decoding skills impacted his academic performance by affecting his ability to read with fluency and understanding, those deficits did not impact his participation in classroom discussions. TR 378. Ms. G.C. integrated the typing goal into the classroom but did not take data on the goal. TR 382, 383. The student's writing was difficult to read, so Ms. G.C. scribed for

him or had him type. TR 383. The writing goal addressed the mechanics of writing such as capitalization, punctuation and spelling. PD 217; TR 383.

7. Ms. F., the special education teacher, has a bachelor's degree in education and a master's degree in school leadership. TR 17. She was the student's resource (special education) teacher in fifth and sixth grades. TR 22. The fifth grade reading goal addresses decoding and fluency; however, because it measure progress by how many words are read correctly/minute, it measures only fluency, not decoding. PD 300; TR 384. The student's deficits in decoding, coupled with his weaknesses in fine motor coordination and speech articulation, impacted his ability encode, e.g., to spell correctly and express his thoughts in writing. PD 327. His writing was monitored by AIMSweb three minute writing samples. PD 290. The fifth grade writing PLOP reports that he wrote 21 words correctly, spelled 13 correctly, and had a correct writing sequence of 7. PD 327. Those numbers are lower than his scores in June 2014, when he wrote 35 words and spelled 16 correctly. *Id.* A typical 5th grader's correct writing sequence is between 24 and 34. *Id.* His writing goal is to write "a minimum of 41 words written, 25 words spelled correctly, and 20 correct writing sequences." PD 327. Due to his multiple deficits in decoding and encoding, there was a "significant difference" between dictated expression and written expression. *Id.*
8. The student's fifth grade reading program included 250 minutes/week of Fountas & Pinnell and 60 minutes/week of Words Their Way. PD 289, 342. That is a decrease in services from the prior year, which included 75 minutes/week Words Their Way (September 2013 to June 2014), 150 minutes/week Road to Reading (September 2013 to March 2014), Fountas & Pinnell LLI/Road to Reading, 150 minutes/week (March 2014 to June 2014), and Reading Naturally, 150 minutes/week (September 2013 to January 2014). PD 343. The team provided him "wrap-around support" for reading, including reading tests aloud to him and recording tests in advance so that he could listen to them. TR 76. Although Ms. F. recommended that the student's reading program be changed, nothing in the record indicates that it was.
9. An occupational therapy goal was developed to address the student's deficits in written communication. PD 325. According to the present level of performance (PLOP), only 15%-25% of his written work was legible and

25-35% was spelled correctly. PD 325. Although he typed slowly (4-5 words/minute), legibility was no longer a problem. *Id.* His delays in visual motor and visual perception impacted his written communication. The goal requires him to use a typewriter to produce written work with a typing speed of 2-3 words/minute with 70% accuracy. PD 325, 326.

10. The student's deficits in decoding, coupled with his weaknesses in fine motor coordination and speech articulation, impacted his ability encode, e.g., to spell correctly and express his thoughts in writing. PD 327. His writing was monitored by AIMSweb three minute writing samples. PD 290. The writing PLOP reports that he wrote 21 words correctly, spelled 13 correctly, and had a correct writing sequence of 7. PD 327. Those numbers are lower than his scores in June 2014, when he wrote 35 words and spelled 16 correctly. *Id.* A typical 5th grader's correct writing sequence is between 24 and 34. *Id.* His writing goal is to write "a minimum of 41 words written, 25 words spelled correctly, and 20 correct writing sequences." PD 327.
11. The speech goal addresses articulation, specifically the "R" and "th" sounds. PD 331. His articulation errors led to decreased intelligibility in conversations and also impacted his ability to sound out letters for reading. *Id.* The PLOP states that he adequately produced the R sound in 61/100 words. *Id.* He correctly produced /th/ in sentences in all word positions 60% of the time. *Id.* The goal is for him to correctly say the targeted sound in structured conversations with at least 80% accuracy. PD 331.
12. The IEP team found the student eligible as a student with a specific learning disability and a speech/language impairment. PD 275, 278, 279. The IEP includes the following related services: 120 minutes/month direct speech/language services and 20 minutes/month consult services; 100 minutes/month direct occupational therapy services and 30 minutes/month consult services. PD 285. In November 2014, the direct speech/language services were decreased to 80 minutes/month. PD 350, 351. The student was placed in the general education classroom for all academic areas, with 50 minutes/week of reading/writing support by the special education teacher in the general education classroom. PD 333. The IEP also requires 300 minutes/week of reading/language arts instruction in the special education setting. *Id.* The IEP includes extended school year (ESY) for speech services for 30 minutes/week. PD 335.

13. Both parents attended the IEP meeting. PD 316. The mother “violently” objected to the district’s decision to replace writing goals with keyboarding, stating that the multi-sensory impact of writing helped the student remember things. TR 147[3]. The parents thought that their son was not improving and needed more intense services; therefore, they began to explore private schools recommended by their friends. TR 149[3]. They visited two schools, neither of which could provide the intensity of services to fit the student’s needs. TR 149, 150[3]. The mother discussed her concerns with the principal, including telling him about the schools they had visited. TR 150[3]. According to the mother, he told her that “next year (he) will be our top priority.” *Id.* No changes were made regarding related services or intensity of instruction. TR 151(3).
14. The IEP team reconvened on September 30, 2015 to develop the student’s sixth grade IEP. PD 205. Both parents attended the meeting. PD 206. The student’s IDEA eligibility categories remained the same. PD 209, 210. As before, the IEP documents the impact of his deficits: his poor decoding skills “greatly impacted” his ability to read, and his encoding deficits “significantly” impacted his ability to spell and to express his thoughts. PD 214; TR 45. His spelling errors, lack of organization, and punctuation made his writing “extremely difficult to read.” PD 214; TR 47. He relied on adults to write his ideas and answers for him. *Id.* It was difficult to understand him at times. PD 213.
15. In class, the student’s reading materials were between his 2.0 instructional reading and his 3.2 frustration level. PD 219; TR 49, 50. He had weaknesses in decoding, encoding, and fluency. *Id.* The 6th grade reading goal states that he will apply grade-level phonics and word analysis skills to decode words and read at a 4th grade level by the end of the year. PD 219; TR 51. His instructional reading level was at the second grade. *Id.* Because his frustration level was 3.2, the books provided for him were between a 2nd grade level and a 3.2 grade level. TR 49, 50. He was “well below average” on the 2014-15 AIMSweb Reading Improvement Report. PD 245; TR 53. His low reading scores are confirmed on the PARCC, a state exam, on which he scored 29, well below the state average score of 46 and the district average score of 50. PD 249; TR 54, 55. There is not an IEP goal that specifically addresses necessary instructional strategies to address the student’s reading deficits. TR 52. The goal was implemented by the regular and special education teachers and the speech language pathologist. *Id.*

16. The occupational therapy goal, designed to address the student's writing deficit, required him to type. PD 215. The goal is to type at least one paragraph at a speed of 15 words/minute with 90% accuracy. PD 215. His PLOP at that time was typing 10 words/minute with 90% accuracy, although his speed decreased when he had to type longer passages. *Id.* Typical sixth graders could type 20-25 words/minute and type at least three pages in one sitting. *Id.* Ms. C. implemented the goal.
17. A third goal addressed the student's difficulty in written expression, including his difficulties in spelling, capitalization, punctuation, and forming complex sentences. PD 217; TR 47. His PLOP, as measured by AIMSweb, reports that he could write 14 total words, 10 of which were spelled correctly, and a correct writing sequence of 8. PD 217. A typical 6th grader could write a total of 46 words, with 32-44 spelled correctly and 25-37 in correct writing sequence. *Id.* The PLOP is a "general outcome measure" and does not contain specifics about decoding or encoding. TR 48.
18. The final goal requires the student to apply grade-level phonics and word analysis skills to decoding words, with an end goal of reading 112 words correctly per minute with no more than five errors. PD 219; TR 49. His instructional reading level at that time was at a second grade level. *Id.* His frustration level was 3.2, which meant that books for him should be between those two levels. TR 49, 50. He was "well below average" on the 2014-15 AIMSweb Reading Improvement Report. PD 245; TR 53. His low reading scores are confirmed on the PARCC, a state exam, on which he scored 29, well below the state average score of 46 and the district average score of 50. PD 249; TR 54, 55. There is not an IEP goal in that specifically addresses necessary instructional strategies to address the student's reading deficits. TR 52.
19. The IEP includes related services of 30 minutes/month consult OT services, 100 minutes/month direct OT services, and 20 minutes/month of consult speech services. PD 222. Ms. I. has been a speech/language pathologist (SLP) for 30 years and has worked for the district for 25 years. TR 184. She has worked with the student since he was in kindergarten, focusing on articulation. TR 185, 186. Semantics is "a broad term" that includes "understanding vocabulary, being able to manipulate words and understand the content of language." TR 186, 187. Although Ms. I. is trained to work on those problems, in this district, it has not been her

role to target written language. TR 188, 189. The language teacher worked on the identified language issues. TR 192-194. She provided consultative speech services to the student, targeting articulation. TR 192. 200.

20. The student's special education services were changed in sixth grade to 150 minutes/week special education instruction in reading/language arts in the special education setting and 50 minutes/week reading and writing support across all academic areas in the general education setting. PD 221. The IEP also requires 20 minutes/month consult speech/language services and 30 minutes/month consult OT and 100 minutes direct OT. PD 222. Accommodations and modifications include a scribe, extended time, and reading material to the student. *Id.* The IEP includes ESY services for speech for 30 minutes/week. PD 225. A note added after the meeting reports that the student had met his then-current IEP objectives. PD 230. The mother and district discussed speech services, and the mother agreed to consultative services because she was concerned about pulling the student out of class "more... than necessary." PD 230. The parents continued to provide private speech therapy outside of school for articulation. *Id.* The IEP does not identify expressive language as an area of need. *Id.*

21. In sixth grade, the student was "significantly below" a sixth grade level. TR 28. His NWEA reading scores were at the first and second percentile. SD 18; TR 27. His frustration level was 3.2, which meant that books for him should be between those two levels. TR 49, 50.

22. Ms. G.C. provided accommodations such as notes, auditory books, and reading tests aloud to the student. TR 385. The student's reading progress was measured by AIMSweb. TR 386. At the beginning of the year, he read 58 words in one minute with eight errors on a third grade reading passage. PD 237; TR 387. He read 60 words in one minute with 11 errors at the end of the year on a third grade passage. *Id.* His average rate of improvement across the year was negative .20. PD 237; TR 388. His AIMSweb scores for spelling also showed a negative rate of improvement. TR 389. The writing goal measured total words written, irrespective of whether they made sense in sequence, with the goal set at 47 total words. PD 241; TR 389. He wrote only 35 words. TR 389. His sixth grade report card has an X in the boxes for reading, language arts, and writing because he was not evaluated at the sixth grade level. TR

390. Staff did not feel “that was an appropriate measure of his understanding and growth.” TR 390, 391.

23. In January 2016, the student told Ms. F. that the staff person administering the MAP reading test had read the test to him. PD 456-459; TR 44, 62-65. Ms. F. then read the rest of the test to him. PD 456. The resultant test scores were invalid. *Id.*; TR 45.
24. The IEP team met on April 14, 2016 to develop the student’s IEP to transition to 7th grade, which is located in the district’s middle school. SD 13. At that time, he was reading 73 words/minute at a third grade level. SD 29. The IEP has two goals: a reading goal and a writing goal. SD 18-21. The reading PLOP indicates that he was at 1st to 2nd % ile in reading on the NWEA reading measure from fourth grade through fall of 6th grade. SD 18. The goal states he will “read and comprehend a variety of genres to demonstrate his understanding with 75% accuracy on teacher created assessments.” *Id.* His writing PLOP is also a list of NWEA scores from 4th to 6th grade, which range from a 21st %ile to a an 83rd %ile, with sixth grade percentiles of 50-58-66. SD 20. The goal is “to use the writing process to communicate for a variety of purposes utilizing correct grammar, mechanics and sentence structure with 75% accuracy using a teacher created rubric.” *Id.* The educational placement is 95% in general education, with special education in language arts in the general classroom for 75 minutes/week, special education outside the general education classroom for 110 minutes/week, consult OT for six minutes/week, and speech/language consult for five minutes/week. SD 25. The speech minutes are for a check-in time with the student, parents, and teacher to assess his progress. TR 207. ESY is not required. SD 26. The IEP notes report that the student’s “reading progress is inconsistent.” SD 29. Content materials were modified for him, and he needed “a lot of adult support through the writing process.” *Id.* His comprehension improved with the use of audio books. *Id.* He was in a “lower group” for math. *Id.*
25. Ms. N.C., whose work with the student in sixth grade had focused on improving his typing skills, reported that his skills had improved from typing four to six words/minute to typing 13 to 14 words/minute with at least 90% accuracy. SD 17, 30. He no longer wanted the sensory tools that he had used in the past. *Id.* The team recommended monitoring the student’s articulation skills, rather than direct services, because his

articulation had “improved significantly since kindergarten.” SD 17; TR 204(1). He was able to produce all sounds correctly except the /R/ sound. SD 32. The SLP was aware that middle school staff reported that they sometimes had difficulty understanding him; however, that was due to his talking quickly, not to an articulation problem. TR 205. The parents and district agreed to consultative speech services, and the parents continued to provide private speech services for articulation skills. *Id.*

26. The student had a difficult transition to middle school and was “really struggling.... very quiet and depressed and just wasn’t seeming like a happy kid.” TR 107. He had a hard time staying focused and accessing the material presented in class. *Id.*, TR 108. Ms. C., his resource teacher, said he needed more support than she could provide. TR 106, 109. After the first month of school, he was switched to a direct instruction language arts class with Ms. K. and had Ms. C. for math and resource. TR 106, 109. Resource is a small group class that meets at the end of the day to provide extra help to students. TR 107. His IEP was updated on February 27, 2018. SD 50. It reports that the student responded positively to change in programming. SD 50. He preferred to have his work read out loud. *Id.* He often needed redirection. *Id.*

27. Ms. K. has taught in the district for 27 years. TR 454. She provided the majority of the student’s special education language arts instruction in middle school. TR 456. Although she has had some Wilson training, she did not use it with the student. PD 457. His 7th grade reading goal states that he “will apply his skills and demonstrate his understanding of the material by earning an average of 85% on projects/assessments.” SD 52. He was at the 1st %ile per MAP data. TR 459, 460. Ms. K. used Bridges to Literature, which is not an O-G based program, to help the student develop compensatory skills to assist with reading comprehension. TR 473, 482, 483. The pace and materials in her class were different from those in the regular education class. TR 456. The written expression goal states that the student “will develop and strengthen his writing ... to maintain at least an 80% average.” SD 54. The PLOP does not indicate whether he could write a sentence or a paragraph. TR 468. The academic goals do not have specific PLOPs. TR 107-114.

28. In January 2017, the parents had the student evaluated by an independent neuropsychologist, Dr. D. PD 358. Dr. D. has a Ph.D. in clinical psychology and “extensive pre-doctoral clinical training” in the

brain, the central nervous system, and neuropsychological evaluations. TR 276, 277. She did an internship in neuropsychology and a two-year fellowship in neuropsychology after receiving her Ph.D. *Id.* She specializes in dyslexia and related issues. TR 278. Dyslexia is “a neurologically-based condition where the person struggles with learning literacy skills.” *Id.* Dr. D. gave the parents open-ended questionnaires for the student’s teachers but received only one back from the school. TR 283, 284. She reviewed the IEP that was in place at the time of the evaluation and obtained information from the student’s private tutor. TR 284; PD 359.

29. Dr. D.’s formal assessment included numerous standardized tests of the student’s behavior, intelligence, achievement, phonological processing and reading, executive functioning, and oral and word reading. PD 360. On the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V), his verbal and non-verbal reasoning and processing scores were in the high average to above average range. TR 287; PD 361, 364. He had a relative weakness in processing speed, which was at the 18th %ile. *Id.* He has “high average to above average verbal and nonverbal intellectual abilities, strong oral language skills, good learning and memory skills, excellent vocabulary, and good visual processing.” PD 364. Based on his total intellectual profile, the student should have been excelling in school. PD 361, 362; TR 288.
30. Dr. D.’s academic achievement testing revealed the student’s “significant language processing challenges” that significantly interfered with his academic achievement. TR 288, 289; PD 364. His processing speed was at the 18th%ile. TR 287, 288. He has “severe deficits” in literacy skills including decoding, sight word recognition, reading fluency, and comprehension. PD 364; TR 309-313. Although he showed “excellent conceptual understanding of mathematics,” his math skills are very impaired. *Id.*; TR 298-299. He struggled with phonemic segmentation, a skill that is necessary for learning to read and spell, scoring only at the 16th %ile. TR 290; PD 361. He scored at the 16th %ile on the Comprehensive Test of Phonological Processing-2 (CTOPP-2), which is lower than he had scored in Dr. S.’s 2010 evaluation. *Id.* His spelling was at the 1st %ile, well below grade level. PD 362, 364; TR 299, 300. His oral reading was at the 2nd %ile and his comprehension at the 9th %ile. PD 362.

31. Dr. D. used the Beery Developmental Test of Visual-Motor Integration, Sixth Edition (VMI) to assess the student's ability to integrate visual and motor abilities. PD 362, 363. He scored at the 5th %ile on the VMI and showed "very poor" handwriting, consistent with school reports. PD 363. He does not have "any challenges with verbal expression or auditory comprehension," consistent with parental and teacher reports. *Id.*
32. Based on her evaluation, Dr. D. determined that the student has severe dyslexia, dysgraphia, and dyscalculia, e.g., specific learning disorders in reading, written expression, and math. PD 364; TR 314. Due to the severity of his dyslexia, the student needs "(a)s intensive as possible" remediation. TR 315. His verbal and nonverbal intellectual abilities are "high average to above average," and he is capable of learning "at a *far* higher level" than he was when Dr. D. evaluated him. PD 364.
33. Dr. D. recommended that the student receive a structured literacy program such as Orton-Gillingham (O-G) or a program based on O-G, such as Wilson, Barton, or SLANT, which are designed for students with dyslexia. PD 366; TR 319-323. These programs are "multi-sensory, highly explicit, highly sequential." TR 320. The programs used by the district are not evidence-based interventions for students with dyslexia. *Id.*; TR 323, 324. The student requires an intense program, including ESY, to receive educational benefit. *Id.* Dr. D.'s report includes numerous recommendations for accommodations and supports. PD 366, 367; TR 316-31. Dr. D.'s experience with the student was necessarily limited to the time she spent evaluating him, reviewing the records, and meeting with his parents. Despite these limitations, the undersigned finds her testimony credible.
34. The parents had expected to receive Dr. D.'s report in mid-February 2017 but did not actually receive it until mid-March. PD 476-478.
35. The IEP team met on February 27, 2017 to review the student's progress and develop his 8th grade IEP. PD 152. Both parents attended the IEP meeting. PD 153. According to the IEP, the student "has been very successful and his affect is positive and happy" since he was provided with a higher level of support after a difficult start to the academic year. PD 155. He preferred "to have his work read aloud" and was more successful when that was done. *Id.* His reading, as measured by NWEA, was still at the 1st %ile. PD 155. His language usage had risen slightly,

from the 1st %ile to the 6th %ile. PD 155, 156. OT services focused on monitoring his typing and attention skills throughout the school day. PD 156. Although staff reported that he was “difficult to understand, his speech services were consultative. *Id.* He struggled with decoding, fluency, and overall reading comprehension. PD 158. He was “more successful” when text was read aloud to him. *Id.* His language usage, which was at the 1st % ile in fall 2016, had increased slightly to the 6th % ile by February. PD 160. The PLOP states that he was in “the low average range for planning, organizing, developing, revising and research,” and the low range “for understanding and applying rules of grammar and mechanics.” *Id.* Teachers focused on “compensatory skills to assist him with the reading comprehension.” TR 473. Thus, the IEP includes numerous accommodations and supports including, in part, adequate time to respond, frequent breaks, minimizing distractions, simplifying language in directions, prereading questions to focus on essential information, audiobooks, extended time, and reading tests aloud to him. PD 163, 164. His transition plan goal is to attend a four year university and work in the computer science field. PD 168. The IEP requires special education math in the general education classroom and special education reading, language arts, resource study period, and resource home base in the special education classroom. PD 173. The IEP also includes 50 minutes/quarter of consult OT and 20 minutes/month of consult speech/language services. PD 173. ESY is not required. PD 175.

36. Because the IEP team had not received Dr. D.’s report before the February meeting, they wanted “some time” to consider the psychological evaluation and recommendations and agreed to “share feedback” with the parents after further reviewing her report. PD 179. The student’s NWEA scores for seventh grade were: language usage - fall 2016 1st %ile, winter 2017 6th %ile; reading - fall 1st %ile, winter 2017 1st %ile; and, math - fall 2016 9th %ile, winter 2017 25th %ile. PD 181.

37. The principal informed the parents on March 17th that the team had not yet “had the chance to dig in to the outside eval” but would start its review on March 20th. PD 480. On April 20th, the student’s father again requested an IEP meeting to discuss interventions and plan for the upcoming school year. PD 481. He included a list of requested evidence-based interventions for students with dyslexia with his email to the principal, including O-G, Wilson Reading System, Barton, and SLANT . *Id.*, TR 482. The district had reviewed the evaluation by April 20, 2017,

and the parents requested an IEP meeting to discuss the report. PD 481. They also proposed specific interventions and accommodations to be included in the student's IEP. PD 481, 482. On August 24, 2017, the parents informed the district that they were "considering private high schools that specialize in kids with dyslexia" and asked several teachers to complete recommendation forms. PD 491.

38. The student attended Wolf Creek in summer 2017. TR 66(3). Ms. B. is the camp's executive director. TR 59(3). The camp focuses on literacy training for children with dyslexia. *Id.* Ms. B. has a master's degree in education from Johns Hopkins and is a fellow in the academy of O-G educators. TR 61(3). She had been a public school teacher for several years and also founded two private schools for students with dyslexia. TR 60, 61(3). Orton-Gillingham was designed in the 1920s by Dr. Orton, a neuroscientist, and Anna Gillingham, an educator who worked with him. TR 61, 62(3). They developed techniques to teach bright children who were unable to read because of dyslexia. TR 62(3). According to the National Institute of Health, dyslexia is a medical diagnosis with an educational treatment. *Id.* The dyslexic brain handles language and reading in a very different way than a non-dyslexia brain. TR 63-65(3).
39. The camp program includes four hours/day of direct literacy instruction, which is 1:1 tutoring with a trained O-G tutor. TR 66(3). After the literacy instruction, there is one hour of study hall in small groups, during which the students receive intensive and specific instruction on what to do and are given materials to work with. *Id.* The study halls are monitored by trained staff. *Id.* A student with dyslexia takes much longer to master skills than a non-dyslexic student does. TR 67(3). After study hall, the students have a 20 minute snack break and then an hour of written work. TR 68, 69(3). Next is an hour of art or science, followed by lunch. TR 69(3). The afternoon has an hour of 1:1 fluency reading and literature circle, followed by afternoon activities. *Id.* The student's skills were "abysmal" when he began camp, and he made "minimal progress" the first summer. TR 70(3). He is "exceptionally impacted, severely impacted" by dyslexia and also has a severe speech impediment. *Id.*
40. In summer 2017, the student read orally 1:1 for 30 minutes/day and also had reading in tutoring and monitored study hall. PD 387. Reading instruction focused on alphabet skills, decoding, comprehension, and vocabulary. PD 387, 388. His "limited reading ability" impacted his

comprehension and his general fund of knowledge. PD 388. He was tested at the beginning of camp (June 24, 2017) and the end of camp (July 29, 2017). PD 386. His score on the Woodcock-Johnson Word Attack subtest increased from a 3.8 grade equivalency (GE) to a 4.4 grade equivalency. *Id.* His DSPT spelling score increased from a 3.0 GE to a 4.2 GE. *Id.* Some of his scores showed a slight decline. PD 386. The student chose to switch from printing to cursive and by the end of camp was able to make most of the lower case letters correctly. *Id.*

41. Ms. B.'s "strongest recommendation was that the parents enroll the student in a full-time school designed specifically for students with dyslexia," and she suggested several schools. PD 390. She specifically recommended [REDACTED] because of its "sterling reputation for success in educating severely dyslexic children." PD 390; TR 72, 73(3). Because of his severe dyslexia, he was "unable... to successfully compete in a regular classroom" and should "under no means be placed in a special education class." He has severe dyslexia and needs "several years of intensive help in acquiring literacy." PD 391. The student's "skill level makes it impossible for him to successfully compete with non-dyslexic students on grade level activities." PD 390). His foundational skills are weak, and he needs to get up to a 9th -10th grade equivalency on the Woodcock-Johnson to be able to "go on to more advanced literacy." TR 75(3). It will take him longer to be remediated because of the severe impact of his dyslexia. TR 76(3). He needs "continued, intensive remedial work in the language areas" and classes such as social studies, literature, English, mathematics, and science that are "geared to where children can learn... without the necessary ability to be able to handle those advanced texts." TR 77(3). [REDACTED] is "excellent" at providing that kind of teaching. *Id.* Ms. B. was clear in her testimony about the student's educational needs and experience in the camp program. The undersigned finds her testimony credible.

42. The camp cost \$8500.00, which the parents have paid. PD 532; TR 80(3). Travel expenses to/from camp were \$2,812.00. PD 501; TR 297(3).

43. In August 24, 2017, the parents informed the district that they were "considering private high schools that specialize in kids with dyslexia" and asked several teachers to complete recommendation forms. PD 491.

44. Following up on Ms. B.'s recommendations, the parents looked at several schools in the Chicago metropolitan area. One of schools did not have 1:1 instruction, which both Dr. D. and Ms. B. had emphasized, and also only took students who had a reading level of 6th grade or higher. TR 123, 127(3). Another only went to 8th grade and also did not have 1:1 instruction. TR 125(3). A third school, which was suggested by the high school district, also did not have 1:1 instruction or intensive reading interventions. TR 127(3). The high school district proposed a second school, but it did not have O-G reading instruction. TR 128(3). They also considered a different out-of-state residential school, which the student and Mr. C. visited. *Id.*; TR 182(3). In contrast to the schools they visited in the Chicago metropolitan area, ██████████ integrates O-G into everything and provides consistent programming. School is from 9:00 a.m. to 9:00 p.m., with a break for athletic activity and two hours off. The student liked ██████████ better. TR 182(3).

45. The district held an IEP meeting on September 28, 2017 to review the student's eligibility and services and to discuss Dr. D.'s report. SD 83; TR 479. Both parents attended the meeting. SD 85. The district had conducted an evaluation a couple weeks before the meeting. SD 121. The district's evaluation included: a behavioral observation; behavioral rating scales completed by the student, parents, and teachers; a records review; the Kaufman Test of Educational Achievement, 3rd Ed. (KTEA-3); an informal speech/language observation and evaluation; interviews with teachers; and, a review of records. SD 121. On the KTEA-3, he scored at the 1st %ile on the reading composite. SD 123. He needed "significant additional time to read and process" information due to his decoding deficit. *Id.* His decoding ability was significantly impaired, at the 1st %ile. *Id.* His phonological processing was at the 47th %ile, indicating that he could "hear, identify, and manipulate individual sounds within words." *Id.* The district's reading interventions in middle school included Bridges to Literature, Six Minute Solution, and SRA, none of which are O-G based interventions. TR 481. Bridges to Literature focuses on reading comprehension, and all the text "is adapted to a lower reading level." TR 488, 489. Six Minute Solution is a fluency activity in which students practice reading to a peer and give/receive feedback to each other. TR 490-492. It is not an O-G based intervention. TR 482. The student read with the teacher once/week. *Id.* His MAP reading score was at the 9th%ile in spring 2017 and had been consistently below the 10th%ile. SD 124. His reading comprehension was at a 4.3 GE, and his listening comprehension

was at the border of average/above average. *Id.* His KTEA-3 Written Language composite was at the 0.5%ile nationally. SD 126; TR 482. On the KTEA-3 math composite, his standard score was 92, which is at the 30th%ile. SD 125. The examiner reported that Dr. D.'s results on the student's ability to "read words efficiently, decode words, read sentences fluently, and comprehend what was read" were consistent with the district's results. SD 124. The district's speech/language pathologist conducted a records review and an informal assessment. SD 121; TR 216. The student's speech fluency and receptive and expressive language skills were within normal limits. SD 138; TR 218, 227. Although he was "difficult to understand at times," he produced intelligible speech and "was capable of monitoring and correcting" his speech. *Id.* An OT evaluation found that he was faster at keyboarding than handwriting but made "significant spelling errors" in both. SD 142. The student was found eligible as a student with a specific learning disability. SD 87.

46. The reading comprehension PLOP incorporates the student's overall MAP reading score of 198/9th %ile. SD 97. The goal is to improve his score of 22% to 30% when presented with a silent reading probe, as measured by AIMSweb. *Id.*; TR 483. The decoding and fluency PLOP reports that his overall reading score was at the 9th %ile. SD 105. The goal is for him to decode and increase oral reading fluency to 90 words/minute. *Id.* An executive functioning goal addresses attention and organizational skills. SD 99. The PLOP indicates problems with inattention, initiating tasks, working memory but does not include any measures in those areas. *Id.* The goal requires him to "transfer core materials from class to class 9 out of 10 trials with 100% accuracy." *Id.* The writing PLOP reports that his MAP writing score was in the average to low average range. SD 102. The goal states that he will use basic components of the writing process to produce a paragraph with an average of 80%, assessed by a teacher rubric that is attached to the goal. *Id.* A written communication PLOP states that his handwriting is below grade/age level and at 20 words/minute. SD 107. He mixes uppercase and lower case letters, and the readability of his writing varies. *Id.* He has difficulty composing work and with spelling. *Id.* The goal is for him to accurately copy 20 words per minute. *Id.* The team recommended placement in a special education classroom for English, reading, resource study, and reading intervention; general education classroom with supplementary aides for science, social studies, and math; and lunch, PE, and exploratory in the general education classroom. SD 114. Although the box for ESY is checked,

nothing is filled out for special education services or minutes. SD 115. The parents disagreed with the placement recommendation and requested that the district fund an out-of-district residential placement. SD 116.

47. The parents provided 1:1 tutoring with a Wilson-certified tutor for the student at their own expense each school day morning, so the student began school in second period. TR 166(3). The parents paid \$2847.50 for the tutoring. PD 504-508, 534-537.
48. The parents raised concerns about whether the student was making “overall progress” in light of his “discrepancy from his same age peers.” SD 116. They expressed concern about the district’s use of SRA in 8th grade because it was a program that Dr. D. had said was inappropriate and would not work with dyslexic students. TR 167(3).
49. The district proposed placement in a public therapeutic day school. SD 115, 117; TR 167(3). The parents disagreed and asked the district to fund an out-of-district placement. *Id.* The parents also expressed concern about the district’s use of SRA in 8th grade because it is a program that Dr. D. had said was inappropriate and would not work with dyslexic students. TR 167(3).
50. After the IEP meeting, the father and student visited two residential schools that were “intensive and appropriate” for the student. TR 182. Both were out-of-state, and both had 1:1 O-G instruction. *Id.* The student preferred [REDACTED]. *Id.* The parents filed a Notice of Intent to Place Disabled Child in Non-Public Facility and Seek Reimbursement from School District on November 1, 2017. PD 2. The student was enrolled in [REDACTED] on November 6, 2017. SD 220; TR 181(3).
51. Mr. P. is the headmaster at [REDACTED]. TR 209(3). He has been employed at the school for 11 years and served as headmaster for the past six years. *Id.* Prior to being the headmaster, he had served as a tutor, teacher, crew chief, dorm head coach, and department head at the school. TR 210(3). He had a two week associate O-G training in summer 1995 and then an ongoing practicum that was supervised by a fellow in the O-G academy. *Id.* The practicum was about 100 hours. TR 211(3). The training included instruction in teaching in a multi-sensory way, and the supervision was an essential component of the program. TR 212(3). Mr. P. has a B.A. in English and also a law degree. TR 214(3).

52. ██████ accepted the student for several reasons: he was “clearly struggling with a language-based learning difference” and was “sufficiently, cognitively strong.” TR 216(3). Dr. D.’s evaluation and recommendations also showed that “he was a good match for the school.” TR 216(3). The school goes from second grade through twelfth grade and has a staff to student ratio of 1:2. TR 218(3). There are 12 students in the 9th grade class. TR 261(3). All the teachers are O-G trained. TR 219(3). Students have 1:1 tutoring for 45 minutes five days/week. TR 221(3). Classes start each weekday at 8:00 and end at 3:30. *Id.* After that, there is a sports program until 5:00 p.m. TR 222(3). All students attend a mandatory study hall after dinner Monday through Thursday from 6:40 to 8:40. *Id.* There are “study conditions” in the dormitory on Sunday night. *Id.* In study hall, skills and patterns learned during the day are applied and reinforced to subject matter. TR 223(3). Study hall is an integral part of the program because it provides a forum in which the students can apply the skills and patterns they learned in the classroom. TR 225(3). Each proctor writes a short report on every student every night and gives it to the appropriate instructor the next day. *Id.* This allows the instructor to adjust the lessons for each student and also to adjust the instructor’s approach according to the feedback. *Id.*, TR 245-247(3). This student is “on the more severe end” of students with a language-based disability. TR 227(3). He has severe dyslexia and is a number of years behind in grade level. TR 228(3). He has made “meaningful but modest” progress at the school and will need the program throughout his high school years. TR 247(3), 248(3), 262(3).

53. Because all of the students at ██████ have severe dyslexia, the student “doesn’t have to worry about feeling odd when he’s in a subject matter classroom in a group setting, reading aloud in front of other students who might not have his profile.” TR 256(3). He is only required to read aloud when he is with his individual tutor in a sound-proof room with no other students. *Id.* There is “no stigma attached to his learning profile.” *Id.* The other students “get him” and understand “what he’s going through.” *Id.* That environment makes him “available for academics.” TR 257(3).

54. ██████ assessed the student in November 2017, after he had entered the school, and then in May 2018, at the end of the academic year. PD 577. When he returned in fall 2018, he was re-assessed. *Id.* The assessment included four reading assessments: Woodcock Reading

Mastery Tests, 3rd Edition (WRMT-3) - two subtests given, the word attack and the word ID; Gray Oral Reading Test, 5th Edition (GORT-5); the Gates-MacGinitie Silent Reading Test, 4th Edition (GMRT-4); the Nelson-Denny Reading Test, and the Test of Written Spelling (TWS). PD 569, 570. In November 2017, his word attack skills, as measured by the WRMT, were at the 1st %ile, which is a 2.2 grade equivalency. TR 231(3); PD 577. In fall 2018, his score on the same test was at the 13th %ile with a grade equivalency of 4.5, showing substantial improvement. PD 577; TR 231(3). Word attack skills are critical in remediating the student's dyslexia. TR 232(3). His word ID on the WRMT-3 in fall 2017 was at the .1st %ile, which is a 1.9 grade equivalency. *Id.* In fall 2018, he was at the 2.8 %ile, which is a 4.5 grade equivalency. *Id.* On the TWS, he was at <1st %ile in November 2017 and the 2nd %ile in fall 2018. TR 233(3); PD 577.

55. The GORT mimics reading that is normally done in school and indicates whether a student is sustaining decoding ability or just reading words in isolation. TR 234, 235(3). On the GORT, the student's GE rate increased from 3.0 in fall 2017 to 4.0 in fall 2018. TR 235(3); PD 578. In accuracy, he moved up a grade level, going from 2.2 GE in fall 2017 to 3.2 GE in fall 2018. *Id.* His fluency score increased from a GE of 2.7 in fall 2017 to 3.4 in fall 2018. *Id.* These scores, which show "modest progress," indicate that the student is on the "severe end of the continuum" of students with dyslexia. TR 236(3). A student with less severe dyslexia would not have made "just modest progress with this kind of intervention." TR 236, 237(3). Due to the severity of his disability, the student "requires a longer period of time for remediation." TR 237(3).

56. On the Gates-MacGinite, the student's vocabulary score was at the 9th %ile in November 2017 and at the 18th %ile in fall 2018. TR 239(3); PD 580. His comprehension scores increased from the 5th %ile in November 2017 to the 14th %ile in fall 2018. TR 239, 240(3)S; PD 580. His total reading score increased from the 5th %ile in November 2017 to the 16th %ile in fall 2018. TR 240(3); PD 580. This test "is a close mimic of reading from a textbook." TR 240, 241(3). The student's progress "confirms... the wisdom of this kind of intervention" for the student. TR 241(3).

57. In May 2018, [REDACTED] gave the student its academic effort award. PD 581; TR 241(3). This award is the "most distinguished award" the school gives and has rigorous criteria for looking at effort across the environment, including both school and tutoring TR 241-243(3). The

student is “good fit” for [REDACTED]. TR 253(3). He does not need a therapeutic setting, which is beyond [REDACTED]’s mission. *Id.* He “struggles with language in its written form... output and input.” *Id.* The school has an international baccalaureate curriculum, which he can handle. *Id.* The tutoring remediation is effective for him. *Id.* He is on the “more severe end” of dyslexic students and being with other students “with the same profile” has helped his self-esteem. TR 255. He has transitioned well to the school, has made friends, and enjoys participating in the school’s “rigorous athletic program.” TR 254(3). Mr. P. gave a clear picture of the student’s experience at [REDACTED], and the undersigned finds his testimony credible.

58. The IEP team reconvened on May 18, 2018 to discuss programming for high school . SD 200. The parents and their attorney and the district and its attorneys attended the meeting. SD 194. The student’s tutor at [REDACTED] participated in the conference by telephone. SD 229. The district’s proposed placement was a private therapeutic day school and ESY. SD 215, 216. [REDACTED] had provided an extensive report about the student’s work since his enrollment in November. SD 225-248. The high school special education director provided information on options in the high school SD 221. The high school has two reading programs: Read 180, which has 20 minutes of direct instruction and small groups, computer based work, and independent work; and System 44, which uses an “O-G approach.” The team also discussed therapeutic day schools. *Id.* The parents asked the district to consider [REDACTED], but the district did not agree that the student requires an out-of-state residential program. SD 221, 222. The parents filed a second Notice of Intent to Place Disabled Child in Non-Public Facility and Seek Reimbursement from School District on May 23, 2018. PD 40. When the student returned home in June from his first year at [REDACTED], he read street signs and store signs out loud for the first time in his life. TR 187(3). Ms. B. sent him a letter than summer, which he read entirely by himself. *Id.* He began cursive handwriting at camp and continued it at [REDACTED]. TR 188(3). His cursive is legible. TR 188(3).

59. The parents have paid \$52,500 for tuition, \$1150.00 fees, and \$1125.00 activity fees for school year 2017-18, totaling 54,775.00. TR 250- 252(3); PD 492. The bill for 2018-19 is: tuition \$69,000.00; fees, \$1950.00; and uniform \$496.00, totaling \$71,446.00. *Id.* As of October 3, 2018, they had paid \$48,000 on the 2018-19 tuition bill, leaving a remainder of \$21,000.

TR 251(3). The student does not receive financial aid. TR 252(3). The family's travel expenses to/from [REDACTED], which they have paid, total \$5786.60. PD 492, 492A.

60. The student attended Wolf Creek again in summer 2018, and Ms. B. was his tutor that summer. PD 396. The camp fee was \$8500.00, which the parents have paid. PD 503; TR 80(3). Some of the student's scores had regressed from his prior year at camp because of his "severe short-term memory deficits." PD 396. However, he made "incredible progress" in going from a "terribly introverted, scared, angry child" to a child with confidence and a feeling of being worthwhile. TR 70, 71(3). The travel fees to/from camp were \$2812.00, which the parents have paid. PD 493.
61. Ms. B. focused on the student's foundational reading skills, which continued to be "significantly impacted." PD 396. Foundational reading skills, which must be mastered to be a good reader, include phonemic awareness and applying the alphabetical principle. TR 97(3). The student has not mastered those skills and would not be able to handle school grade text without them. TR 97, 98(3). He needs "intensive tutoring on the basic foundational skills of learning to read," and his other skills will move forward when he has that. TR 99(3). He read two books over the summer: "Jim Henson," which was 106 pages, and "Shiloh," which was 144 pages. *Id.* Despite his significant decoding deficit, the student was able to comprehend books through the 6th grade reading level. PD 397. His vocabulary "improved significantly," including in his informal speech, and his writing also showed significant improvement. *Id.* He continued to have difficulty in spelling, so part of each tutoring session focused on spelling rules. *Id.* He switched to cursive because his printing was "big and awkward" and although slow, his writing was "far preferable" to his printing. *Id.* He also had computer keyboard instruction for half the camp. *Id.* Although he rarely finished his independent work, his efforts to do well were reflected in his completed work. *Id.* He showed "significant growth in being able to show his intelligence" in many ways. PD 398.
62. Based on the student's skill level when he began at [REDACTED] and his progress thus far and Ms. B.'s experience with other students at the school, Ms. B. opined that it would take at least three more years for the student to be remediated. TR 262-265(3).

63. As of the dates on which this hearing was held, the student was in 9th grade at [REDACTED]. TR 247(3). He has made “meaningful but modest” progress there. SD 228-248; TR 248(3). Mr. P. opined that he would need two to three years more. *Id.*
64. The parents have paid \$52,500.00 for [REDACTED] tuition for the 2017-18 school year. PD 494; TR 250, 251. They also paid \$1150 in fees and \$1125 in activity fees, totaling \$54,775.00. As of the date of Mr. P.’s testimony, they had paid \$48,000.00 for [REDACTED] tuition for the 2018-19 school year and owe \$22,000.00 on December 1st. TR 252(3); PD 495. The student does not receive financial aid from [REDACTED]. TR 252(3).
65. The parents’ projected expenses for [REDACTED] tuition and fees for school years 2019-20 through 2021-22 are \$212,850.00. (Closing argument, expense sheet). Their projected travel fees to/from [REDACTED] through school year 2021-22 are \$24,000.00 (\$6,000.00/year). (*Id.*) Their projected fees for Wolf Creek Camp 2019 are: \$8500.00 (camp fee) and \$2,700.00 (travel). (Closing argument, expense sheet).
66. Other claimed expenses include: Wilson tutoring from Village Tutors in 2017 - \$3,060.00; and, Easter Seals speech therapy 2015-2017 - \$2,480.96. Closing Argument Expense Sheet; PD 492-568.

CONCLUSIONS OF LAW

The purpose of the IDEA is to ensure that all children with disabilities receive a free appropriate public education and related services “designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C. §1400(d)(1)(A). A district must comply with the IDEA’s procedural and substantive requirements in order to provide a free appropriate public education (FAPE) to a student. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176 (1982) (“Rowley”). To meet its substantive obligation, a district “must offer an IEP reasonably calculated to enable the student to make progress in light of the student’s circumstances.” *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001; 69 IDELR 174 (2017) (“Endrew F.”).

Based on the above factual findings, the parties’ arguments, and relevant case law, the hearing officer’s legal conclusions are as follows:

Whether the district failed to appropriately evaluate the student and failed to appropriately consider the independent evaluations provided by parents, which related to his learning disability;

A district must assess a student in all areas of suspected disability and must use a variety of assessment tools and strategies to gather “functional, developmental, and academic information.” 20 U.S.C. § 1414(b)(2)(A). A district may not “use any single measure or assessment as the sole criterion for determining whether a child is child with a disability or determining an appropriate educational program for the child.” 20 U.S.C. §1414(b)(2)(B). Pursuant to the Illinois School Code, the district has the burden of showing that “the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate, and available.” 105 ILCS 5/14-8.02a(g-55).

The district’s October 2014 triennial re-evaluation included: a review of interventions the district had used over the years; a classroom observation; a review of the student’s health status; a review of speech/language goals and progress; and, an occupational therapy evaluation. ¶4. The district did not conduct any evaluations even though the student was at the 1st %ile in reading, did not know how to sound out words and lacked decoding skills. *Id.* Although the district had Dr. S.’s evaluation at that time, there is no evidence that the IEP team seriously considered his report in an effort to understand and address the student’s severe deficit in decoding and encoding skills. *Id.* The mother testified credibly that she had given Dr. S.’s evaluation to the district after she received it, and the record supports her testimony. The district’s review of that evaluation was cursory, at best, noting only that student was “average.” That is a serious mis-statement of Dr. S.’s findings, which were that the student has a reading disorder and fine motor and visual motor deficits. ¶ 2. The review also does not include Dr. S.’s recommendations to address the student’s educational needs, specifically his recommendation for “an intensive, research based, multisensory reading intervention program” to address the student’s decoding deficits. *Id.* The district did not conduct its own evaluation to determine the basis for the student’s significant deficits in decoding and encoding. Based on the foregoing, the undersigned finds that the 2014 evaluation was not an appropriate evaluation.

The district’s triennial evaluation in fall 2017 consisted of an individually administered achievement assessment, an informal speech/language

assessment and observation, interviews with teachers, and a records review. ¶45. The IEP team convened on September 28, 2017 to review its re-evaluation and discuss Dr. D.'s report, which it had received seven months before, in mid-March. *Id.* The district's evaluation again found that the student has a significant decoding deficit, still at the 1st %ile, that impacts his ability to read and process information. *Id.* There had been no change in his decoding ability since the district's 2014 evaluation. *Id.* His reading curriculum was adapted "to a lower reading level." *Id.* His written language composite was at the 0.5% ile. *Id.* His math composite was at the 30th %ile. The undersigned finds assessments the district administered were sufficient to provide updated information on the student's academic functioning. 20 U.S.C. §1414(c)(1), (2).

However, the district failed to review Dr. D.'s evaluation and findings in a timely manner and to fully consider her recommendations. The record reflects little, if any, discussion of her findings and recommendations: that the student has high average to above average verbal and non-verbal intellectual abilities and needs intense "multi-sensory, highly specific" evidence based interventions to address his severe dyslexia, dysgraphia, and dyscalculia. ¶¶ 2, 33, 34.

A district must consider a parent-initiated evaluation in "any decision made with respect to the provision of FAPE to the child." 34 CFR §300.502(c)(1). In *James and Lee Anne D. v. Board of Education of Aptakisic-Tripp Community Consolidated School District No. 102*, 642 F. Supp. 2d 804, 52 IDELR 281 (N.D. Ill. 2009) (*James and Lee Anne D.*), the district delayed an IEP for one month so that it could review an IEE the parents presented at the meeting. *James and Lee Anne D.*, p. 14. A timely meeting was held and the evaluation discussed. *Id.* In contrast, this district delayed reconvening the IEP meeting for seven months after receipt of Dr. D.'s evaluation report. There is no indication in the record of why such an extensive delay was required to review a 14 page report. PD 358-371. The IEP meeting notes reference Dr. D.'s evaluation only when her findings are consistent with those of the district's re-evaluation. ¶45. The undersigned finds that the district's failure to thoroughly consider and discuss Dr. D.'s evaluation until the September 2017 re-evaluation IEP meeting was a procedural violation that significantly impacted the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student. 34 CFR §300.513(2)(ii).

Whether the district failed to develop an appropriate IEP for the student that included appropriate academic instruction to address the student's learning disabilities, necessary methodological interventions, meaningful IEP goals in all

areas of need, and necessary related services, including speech/language therapy and occupational therapy:

Once a student is determined eligible for special education and related services, the school district must develop an individualized education program (IEP) for the student. 20 U.S.C. §1414(d). The IEP offered to the student must provide “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F.* 69 IDELR 174 (2017). The IEP must include a statement of the child’s present level of academic achievement and functional performance (PLOP), measurable annual goals that will meet the child’s needs, a description of how the child’s progress toward meeting the annual goal will be measured, and a statement of the special education and related services that is to be provided to the child. 20 U.S.C. § 1414(d)(1)(A)(i)(I), (II), (III). Special education is specially designed instruction to meet a student’s unique needs. 34 C.F.R. 300.39(a)(1). Special education instruction must be based on peer-reviewed research, to extent practicable. 20 U.S.C. § 1414(d)(1)(A)(i)(IV).

The student’s fifth grade IEP has three goals. PD 215-220. The first, a reading goal, addresses fluency and decoding; however, it only measures fluency ¶ 7. The record shows that the student made little progress in reading in elementary school. He was at the 1st %ile (MAP) to 2nd %ile (NWEA) in overall reading progress in third and fourth grades. ¶ 3. In fifth grade, he was still at the 1st % ile in overall reading progress, and his inability to decode “greatly impacted” his ability to read. ¶4. His PARCC scores showed that he was “well below” district and school averages. ¶4. Despite consistent documentation of the student’s lack of reading progress, the district continued to use the same reading curriculum for the student - Road to Reading, Words Their Way, and Reading Naturally. ¶3, 8. None of those is an evidence-based intervention for students with dyslexia. ¶32. The occupational therapy goal does not address the student’s deficits in visual motor and visual perception. Instead, it provided a workaround of teaching him to type his written work. The goal of typing 2-3 words/minute, while probably realistic, meant that it would take him considerable time to produce written work longer than a few sentences.

The student’s sixth grade IEP memorializes the student’s reading deficits in decoding, encoding, and fluency. ¶14. However, rather than providing explicit instruction to address those deficits, it lowers the bar and aims to have him read at a 4th grade level. *Id.* The reading goal is very similar to the one in

the prior IEP, and it does not address all of his reading needs. *Id.* The occupational therapy goal is again addressed through typing, with an increase in typing speed. ¶ 15. The written expression PLOP requires a certain number of words to be written but does not have specifics about decoding and encoding. ¶ 16. Despite his severe reading deficits, his reading/language arts minutes were reduced. The IEP is not reasonably calculated to help the student make educational progress.

The student's seventh grade reading goal is general and does not address his deficits. ¶ 24. As in the prior IEPs, the PLOP reports his low reading level, and the goal is that he will increase his comprehension. ¶ 24. The goals are general and not tied to his specific deficits. Despite his severe deficits, the proposed placement includes less instruction to remediate his deficits. His speech minutes are for check-ins for articulation. ¶ 25.

Whether the student failed to make progress under the IEPs developed by the district and if so, whether the district failed to appropriately revised the student's IEPs:

An IEP must be “reasonably calculated to enable the student to make progress in *light of the student's circumstances.*” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017) (“Andrew F.”) (emphasis added). The uncontroverted evidence in this case shows that the student is a bright young man with high average to above average verbal and non-verbal intellectual abilities. ¶¶ 2, 29. Despite those abilities, his reading and writing skills were significantly below grade level over his years in the district, between the 1st and 5th %iles. ¶¶ 3, 4, 11, 14, 15, 18, 35. The evidence further shows that although independent evaluators determined that the student has specific learning disorders in reading, writing, and math and recommended changing the student's curriculum to address those deficits, the district declined to do so. ¶¶ 2, 29, 30, 32, 33, 35. In fifth grade, he relied on adults to write his answers and ideas for him. ¶ 4. Instead of remediating the student's reading deficit, teachers bypassed it through accommodations, including reading tests aloud to the student and recording tests in advance so that he could listen to them. ¶ 8. The IDEA and its implementing regulations require an IEP to include “specially designed curriculum,” including methodology, to “address the unique needs of the child that result from the child's disability. 34 CFR § 300.39(a)(1). There is no evidence in the record that he was provided with a curriculum and services to address his unique needs, e.g., specific learning disabilities in reading, writing, and math. Although the district was aware of

his significant deficits in reading, writing, and math, it continued to use the same programs and curricula that had proven ineffective over the years. ¶ 3, 8, 12, 15, 24. In middle school, teachers taught him “compensatory skills” for reading comprehension rather than providing explicit instruction to address his dyslexia. ¶ 35. The evidence supports a finding that the district did not adhere to mandate in the IDEA and its implementing regulations to provide specially designed curriculum, including methodology, to address this student’s unique needs. *A.M. v. New York City Department of Education*, 845 F.3d 523, 69 IDELR 51, p. 15 (2d Cir. 2017). By failing to do so, it also failed to provide special education and related services that would allow the student to make education progress in light of his unique circumstances, as required by *Endrew F.* make progress in light of the student’s circumstances.” *Endrew F.*, p. 1001 .

Whether the district, for more than two years, failed to propose a placement with sufficient and appropriate academic instruction to allow the student to make appropriate academic progress:

The district has been aware of the student’s “reading disorder” since he was in first grade. ¶ 2. The district was also aware that the student has at least average intellectual abilities. *Id.* The 2017 independent evaluation confirms those results and recommends specific methodologies to address his educational deficits. ¶¶ 32, 33. Despite having that information, the district continued to use reading programs that had proven ineffective for this student, including but not limited to Road to Reading, Reading Naturally, Words Their Way, Bridges to Literature. ¶¶ 3, 7, 27. Those programs are not evidence-based programs specifically developed for students with dyslexia. ¶33. By the end of 7th grade, the student was still at the 1st %ile in reading and the 6th %ile in language usage on standardized assessments. ¶ 35. He preferred to have his work read aloud to him and did better when it was. *Id.* The evidence clearly supports a finding that the district failed to propose a placement and program with sufficient, appropriate instruction to allow the student to make appropriate academic progress.

If so, whether this failure directly led to the student’s need for intensive, 1:1 literacy instruction delivered with the comprehensiveness and intensity that [REDACTED] provides:

The 2010 independent evaluation, which the parents provided to the district, recommended “an intensive, research based multisensory reading

program” to address the student’s reading disorder. ¶ 2. The district did not heed that recommendation, and the evidence shows that the student was at the 1st %ile in reading in first grade and still there in 6th grade. ¶ 4, 21, 35. In seventh grade, he still struggled with decoding and was “more successful” when text was read to him. ¶ 35. The district never provided him with a reading program specifically for students with dyslexia. ¶45, 48. Rather than providing direct instruction to specifically address his reading disabilities, staff focused on “compensatory skills” to assist with his reading comprehension, including simplifying language, prereading questions, audio books, and reading tests out loud to him. *Id.* This failure, repeated year after year, has directly led to the student’s need for an intensive program that provides 1:1 literacy instruction so that the student can develop the skills he did not develop in the district’s program and placement.

██████████ provides a small, comprehensive academic program in which students receive direct instruction from O-G trained teachers. ¶ 51. All of the students have severe dyslexia so there is no “stigma attached to (the student’s) learning profile.” ¶ 56. Students participate in academic classes during the day and have 1:1 tutoring for 45 minutes five days/week. ¶ 50. Students attend a mandatory study hall in the evening, Monday through Thursday, during which they “apply skills and patterns” learned in class. *Id.* The student is “on the more severe end” of students with dyslexia and “a number of years behind in grade level.” *Id.* During the relatively short time the student has been attending ██████████, he has shown academic progress, as measured by standardized reading assessments. His word attack skills have risen from the 1st %ile in November 2017 to the 13%ile in fall 2018. ¶ 52. On the Test of Written Spelling, his scores rose from below the 1st %ile to the 2nd %ile. *Id.* Because of the severity of his dyslexia, he requires a “longer period of time for remediation.” *Id.* The evidence supports a finding that the district’s failure to address the student’s dyslexia have directly led to his need for intensive 1:1 literacy instruction.

Whether the student requires placement in a residential school, and specifically at ██████████ School, for school years 2017-18, 2018-19 and 2019-20, including all summers, to remedy the significant educational deficits that have resulted from the district’s denials of FAPE to this student:

The student attended an intensive summer program for students with dyslexia in summer 2017. ¶ 36. The program provided intense 1:1 direct literacy instruction with a trained O-G tutor for four hours/day. ¶ 37. Students

also were required to attend a small group study hall that provided intensive, specific instruction. *Id.* The student's skills, as measured by standardized assessments, increased. *Id.* He attended the camp again in summer 2018. ¶58. Some of his skills had regressed from the prior year due to his "severe short-term memory deficits." *Id.* He read two books over his time at camp, and his vocabulary "improved significantly." ¶59. This student needs a year-round program to sustain his progress.

This evidence, coupled with the foregoing evidence on ██████████ and the student's program and progress there, support a finding that the student requires placement at ██████████ year round. ██████████ offers a comprehensive program that includes O-G instruction to address the student's severe dyslexia as well as academic classes that use an international baccalaureate curriculum. ¶ 52. His scores on standardized assessments that the school administers on an annual basis. ¶¶ 54, 55. The student has made friends and participates in the extensive academic program as well as the school's athletic program. He has made progress at ██████████, and because of his hard work, the school awarded him its academic effort award. ¶57. He needs a year-round program so that his "severe short-term memory deficits" do not disrupt his progress. ¶ 60.

Whether the above-alleged failures denied the student a free appropriate public education

The IDEA defines a free appropriate public education (FAPE) as special education and related services provided at public expense and in conformity with a student's IEP. 20 U.S.C. §1401(9). A district must meet both the procedural and substantive requirements of the IDEA to provide a FAPE. In *Endrew F.*, the court held that a district must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017). The student's IEP must be "appropriately ambitious in light of (the child's) circumstances." *Endrew F.* 137 S. Ct. at 1000. A child's progress must be assessed alongside the child's potential. *Endrew F.*, 137 S. Ct. at 999.

The foregoing evidence shows that the district failed the student in several ways over a number of years. He began receiving special education services in kindergarten. Although the district was aware of his decoding and encoding deficits for years, it failed to develop an IEP that provided explicit instruction to address his deficits related to his specific learning disabilities.

Because of that failure, his reading percentiles on district assessments remained in the single digits, despite the student's high average to above average verbal and nonverbal intellectual abilities. His progress between kindergarten and seventh grade was significantly lower than his potential. The district failed to develop an IEP that was substantively appropriate and met the *Andrew F.* standard. This failure, repeated year after year, has denied the student a free appropriate public education. The district's procedural failures also resulted in a denial of FAPE.

The district argues that a residential placement is improper because it is not the student's least restrictive environment (LRE). *Beth B. v. Mark Van Clay and Lake Bluff School District #65*, 282 F.3d 493, 36 IDELR 121 (7th Cir. 2002) (*Beth B.*). In that case, the district placed the student in a life skills (ELS) classroom. *Id.*, p. 4. The student, who was severely disabled, are been in a regular education classroom for seven years. *Id.*, p. 2. The court held that the ELS classroom provided a FAPE. *Id.* The parents argued that placing the student in the ELS room would violate the LRE requirement. *Id.* p. 4. The court held that although the regular classroom was less restrictive, it did not have to place her there unless that placement would be appropriate. *Id.* The court held that the regular classroom was not an appropriate placement; however, it declined to adopt a formal test for deciding LRE cases. *Id.*, p. 5. The facts in this case are distinguishable from *Beth B.*

In *Cleveland Heights-University Heights City School District v. Sommer Boss*, 144 F.3d 391, 28 IDELR 32 (Sixth Cir. 1998) (*Boss*), the district argued that the placement at which the parents placed the student was not proper because it was not the mainstream placement. *Boss*, p. 8. The court held that "the IDEA was intended to provide both a free and an appropriate education for disabled children" and that the Act should not be read to put a party in the position of having to choose between the two alternatives of . *Id.*, p. 9. This case is directly applicable to the case before this hearing officer, and the undersigned finds it persuasive. The holdings in *Burlington v. Department of Education*, 471 U.S. 359, 372-74 (1985) and in *Florence County School District Four v. Carter*, 510 U.S. 7, 15 (1993) support this reasoning and decision. *Boss*, p. 9.

A hearing officer may order tuition reimbursement for a unilateral placement when a district's proposed IEP is inappropriate and the private placement chosen by the parents is proper. 20 USC § 1412(a)(10)(C)(iii)(I) 34 CFR § 300.148(d)(1). Reimbursement may be limited or denied if the parents

did not inform district at most recent IEP meeting they were rejecting district's proposed placement and state their concerns and intent to enroll at private school at public expense or did not give written notice 10 business days prior to removal of the child from the district. 20 USC § 1412(a)(10)(C)(iii)(1)(aa), (bb); *Burlington v. Department of Education*, 471 U.S. 359, 374 (1985); *Florence County School District Four v. Carter*, 510 U.S. 7, 16 (1993). This hearing officer has found that the district's proposed IEP and placement therein is inappropriate and that [REDACTED] is a proper placement.

As to the Notice requirement, the parents attended and participated in each of the student's IEP meetings throughout his years in the district. The parents, particularly the mother, communicated regularly with the district. The parents informed the district in August 2017 that they were considering a private placement and asked teachers to fill out recommendations. ¶ 41. At the September 28, 2017 IEP meeting, the parents disagreed with the district's proposed placement and requested a private placement. PD 49. They filed a 10 Day Notice of Private Placement with the district on November 1, 2017, after they had visited [REDACTED] and the had been accepted. *Id.* The student was enrolled in [REDACTED] on November 6, 2017. *Id.* The parents filed a second 10 Day Notice, with both elementary and high school districts, on May 23, 2018. PD 40A, 40B. The undersigned finds that the parents filed proper 10 Day Notices. The district shall reimburse the parents for the tuition they have paid for the unilateral placement of the student at [REDACTED].

The parents have requested placement at [REDACTED] for the remainder of the current school year 2018-2019 and for school years 2019-2020, 2020-2021, and 2021-2022 as compensatory education, funded by the district. A hearing officer may award "educational services... to be provided prospectively to compensate for a past deficient program." *G. ex rel. R.G. v. Fort Bragg Dependent Schs.*, 343 F. 3d, 295, 308 (4th Cir. 2003); *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005); *Petrina W. v. City of Chicago Pub. Sch. Dist. No. 299*, 53 IDELR 259 (N.D. Ill. 2009) (*Petrina W.*). In *Petrina W.*, the court held that a "flexible, individualized approach" should be used. A compensatory education award should be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school should have supplied in the first place." The denial of FAPE in this case is extensive. The evidence shows that the parents provided Dr. S.'s independent evaluation of the student, which had diagnosed the student with a reading disorder, to the district in summer 2010. ¶ 2. Dr. S. made recommendations for the student's education plan, including an "intensive

research based, multisensory reading intervention program.” *Id.* The district did not follow through with Dr. S.’s recommendations. Although the district did determine that the student had encoding and decoding deficits, the instructional programs they provided for the student were neither intensive nor multisensory. ¶¶ 3, 4, 7, 8, 14, 15, 20, 21, 24, 27, 35, 45, 46. In January 2017, the parents obtained another independent evaluation, this time from Dr. D. ¶ 28. Her results confirmed those in Dr. S.’s evaluation, and she diagnosed the student with severe dyslexia, dysgraphia, and dyscalculia. ¶ 32. The parents provided Dr. D.’s evaluation to the district; however, the district did not review it for seven months. ¶ 45. Throughout all those years, the district never provided a reading program that was developed for students with severe dyslexia. ¶¶ 32-45. The student’s reading level, as measured by district assessments, was between the 1st% and 9th % iles. The student had other educational disabilities that also were under-addressed. The educational deprivation is very significant and difficult to calculate, given the time span. The first educational progress the student has made in reading occurred at Wolf Creek Camp and then in the unilateral placement at [REDACTED]. It is difficult to calculate the educational deprivation; however, [REDACTED] has recommended that he stay through high school. Mr. P. TR 248(3). Based on the evidence of the student’s extensive educational needs and the progress he has made since attending [REDACTED], the undersigned adopts Mr. P.’s recommendation as the amount of compensatory education to place the student in the position he would have been had he not been denied a FAPE.

The district asserts that the parents’ compensatory education remedy is moot because the student has moved on the high school and is no longer the financial responsibility of the elementary district. In support of its position, the district cites 105 ILCS § 5/14-6.01. According to that provision, “high school districts are financially responsible for the education of pupils with disabilities who are residents in their districts when such pupils have reached age 15...:”

In *Bd. Of Educ. Of Downers Grove Grade School Dist. No. 58 v. Steven L*, 89 F.3d 464 (7th Cir. 1996), the student had graduated from eighth grade and would begin high school in a different school district. *Id.* at 467. The court held that the case was moot because it could grant no remedy that would impact the student’s IEP from the district. *Id.* However, the parents had not requested compensatory education. Cases in which compensatory education has been requested to remedy a denial of FAPE clearly support the parents’ compensatory request.

In *D.F. v. Collingswood Borough Board of Education*, 59 IDELR 211 (3rd Cir. 2012), the court held that “continuity of residence cannot be a prerequisite to the grant of compensatory education” and thus reversed the district court’s ruling that the claim for compensatory education was rendered moot when the parents moved out of state. The court reasoned that holding otherwise would “create an enormous loophole” in a district’s obligation to provide a FAPE and “substantially weaken the IDEA’s protections.” Courts in other jurisdictions have followed similar reasoning when a request for compensatory education is at issue. See, *Kerry M. and Kristen M. v. Manhattan School District # 114*, 46 IDELR 194 (N.D. Ill. 2006), in which the court held that the parents’ request for compensatory education could go forward even though the students had graduated from the district and were attending high school in a different district “keeps this case alive.” P. 5; *Neshaminy Sch. Dist. v. Karla B.*, 1997 LEXIS 3849 (E.D. Pa. 1997), holding that “compensatory education must be available for a student who has moved from the school district after he has already been deprived of a FAPE”; *N.P. v. East Orange Bd. of Educ.*, 56 IDELR 49 (D. N.J. 2011), holding that the “ability to grant compensatory education does not depend on a student being in the district”; *Lewis Cass Inter. Sch. Dist. v. M.K.*, 290 F. Supp. 2d 832 (W.D. Mich. 2003), holding that there is “no reason that a district should deny a student his right to a due process hearing regarding compensatory education services simply because the student requested the hearing after, rather than prior to, moving from the district” at 838; *L.R.L. v. District of Columbia*, 896 F. Supp. 2d 69 (D.C. 2012), finding that the student had a right to a hearing on a claim for compensatory education because of the IDEA’s “stringent procedural safeguards to permit disabled children and their parents to seek redress from an LEA that is currently or has in the past, failed to fulfill its statutory responsibilities. District courts have broad power to grant equitable relief, including compensatory relief, to remedy past failures by an LEA,” *Id.* at 76.

The parents’ request for compensatory education is granted. This request includes: 1) [REDACTED] tuition for 2018-19: \$21,000.00; 2) [REDACTED] tuition and fees in the amount of \$70,950.00 for each of the following school years: 2019-2020; 2020-2021; and 2021-2022, totaling \$212,850.00; 3) Travel expenses to/from [REDACTED] for each of the foregoing school years in #2 at \$6,000.00 year in the amount of \$24,000.00; 4) [REDACTED] Camp 2019 fee \$8,500.00 plus \$2,700.00 in travel expenses.

The parents must provide receipts for each of the foregoing expense to verify their expenditures.

ORDER

IT IS ORDERED THAT:

1. Within 30 business days of receipt of this Order, the district shall prepare an IEP placing the student at [REDACTED] School at district expense. The parents and relevant [REDACTED] staff shall participate in developing the IEP. The student shall remain at [REDACTED] through school year 2020-2021.
2. The district shall reimburse the parents for partial tuition they have paid to [REDACTED] for the 2017-2018. This includes \$52,500.00 tuition; \$1150.00 fees; \$1125 activity fees: total \$54,775.00;
3. The district shall reimburse the parents for tuition they have paid to [REDACTED] for school year 2018-2019. This includes \$69,000.00 tuition; \$1950.00 fees; \$496.00 uniform: total \$71,446.00; \$21,000.00 not yet paid = \$51,446.00;
4. Travel to/from [REDACTED]: \$5786.60;
5. [REDACTED] Camp 2017 \$8,500.00 + \$2,812 travel = \$11,312.00;
6. [REDACTED] Camp 2018 \$8,500.00 + \$2,643.00 travel = \$11,143; and,
7. [REDACTED] Tutors (Wilson 2017): \$3,060.00

The parents' request for reimbursement for Easter Seals speech therapy is denied. The parents agreed to change the services in the IEP and thus now may not seek reimbursement.

Within 60 calendar days of receipt of this Order, the Downers Grove Grade School District # [REDACTED] shall submit proof of compliance to:

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

REQUEST FOR CLARIFICATION

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

RIGHT TO APPEAL

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

ISSUED: October 22, 2018

[REDACTED] _____

Mary Schwartz
Impartial Hearing Officer

CERTIFICATE OF SERVICE

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

Mr. Charles P. Fox, Esq.
Ms. Julie Welsh, Esq.

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Kamilah A. Parker, Esq.

[REDACTED]
[REDACTED]
[REDACTED]

before 6:00 p.m. on October 22, 2018

[REDACTED]

Mary Schwartz
Impartial Hearing Officer

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]