

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

█, a minor, by and through
His/her Grandparent(s),
Student

v.

Case No. 2019-DP-0141

█ C.U.S.D.
District █
District.

Mary Jo Strusz
Impartial Hearing Officer

FINAL DETERMINATION AND ORDER

JURISDICTION

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400 *et seq.*, and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

PROCEDURAL BACKGROUND

Petitioner is █’s (“Student”) Legal Guardian¹ (“Guardian”), a ten-year-old student who was found eligible for special education services under the disability category of other health impairments and speech or language impairment.² Student was initially found eligible for IEP services by █ School District. Then Student transferred to █ CCSD █, and on August 29, 2017, Student transferred to █ C.U.S.D. █ (“District”).³ On November 12, 2018, Guardian filed a Due Process Compliant

¹ Personally identifiable information is in Appendix A.

² IHO-21. (References o the record in his case are designated “IHO.”)

³ Id.

("Complaint") pro-se against the District pursuant to the IDEA.⁴ This Hearing Officer was appointed to preside over this case on November 20, 2018.⁵ The District filed a response on December 2, 2018.⁶ There was no objection to the untimely response and it was accepted in the record.⁷

At a status conference on December 3, 2018, a prehearing conference was scheduled for January 3, 2019.⁸ On December 6, 2018, an appearance was filed by an Attorney⁹ from [REDACTED] on behalf of Student.¹⁰ The parties participated in resolution on December 13, 2018.¹¹ During the resolution session, the parties agreed that the District would conduct an independent neuropsychological evaluation of Student.¹² On December 17, 2018, the parties filed a joint motion to continue the prehearing conference to March 4, 2019 to allow the completion of the neuropsychological evaluation and review by the IEP team.¹³ The prehearing conference was converted to a status conference to discuss the length of the continuance request and to reset the prehearing conference.¹⁴

On December 28, 2018, the District filed a due process complaint.¹⁵ The basis for the complaint was the parties inability to agree on an independent evaluator for Student's neuropsychological evaluation.¹⁶ There was no resolution meeting held for this complaint.

⁴ IHO-1.

⁵ IHO-3.

⁶ IHO-5.

⁷ IHO-21a.

⁸ IHO-6b.

⁹ Personally identifiable information is in Appendix A.

¹⁰ IHO-7. It is noted that, during these proceedings, [REDACTED] changed its name to [REDACTED]

¹¹ IHO-8.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ IHO-9.

¹⁶ Id.

The District agreed to provide the resolution tracking form to the Illinois State Board of Education.¹⁷

On January 3, 2019, the parties participated in a status conference where it was agreed that the prehearing conference would be scheduled for March 6, 2019 at 1:00 p.m.¹⁸ The parties jointly requested to continue the 45-day decision timeline to March 31, 2019 to accommodate this date.¹⁹

On February 22, 2019, the Hearing Officer requested a short continuance of the prehearing conference to accommodate an expedited hearing for another matter.²⁰ On March 8, 2019, an order resetting the prehearing conference date to March 13, 2019 was entered by agreement of the parties.²¹

On March 11, 2019, the District filed the prehearing conference disclosures and on March 12, 2019, the Guardian filed her prehearing conference disclosures.²² On March 13, 2019, a prehearing conference was held in this matter.²³ Both parties were represented by their Attorney. During the prehearing conference, the District raised a residency question and the Guardian agreed to provide documentation to legally certify the guardianship and a request for compensatory education. The parties agreed to consolidate the Guardian's and the District's due process complaints, certify the issues to be heard at hearing, schedule hearing dates for June 5 and 6, 2019, and request a continuance of the 45-day decision date to accommodate the hearing. Formal motions were filed.²⁴ Two orders were entered on

¹⁷ IHO-21a.

¹⁸ IHO-10a.

¹⁹ IHO-10b.

²⁰ IHO-21b.

²¹ IHO-11.

²² IHO-12, 13.

²³ IHO-14.

²⁴ IHO-15, 17.

March 14, 2019; the first was to consolidate the complaints, and the second was to continue the decision date to June 21, 2019.²⁵ The proposed Prehearing Report and Order was issued March 13, 2019, which required additional information to be supplied by the parties.²⁶

On April 9, 2019, the Hearing Officer requested to change the hearing dates to June 4 and 5, 2019 to accommodate an obligation she was unaware of when the original hearing dates were scheduled. The parties confirmed agreement with the new hearing dates and advised that they were still trying to gather the information necessary to complete the prehearing order.²⁷

On April 28, 2019, the Hearing Officer sent a formal request to the parties to provide the necessary information to complete the prehearing report and order.²⁸ The information was provided by the Guardian on April 30, 2019, including the Guardian's proposed plan for compensatory education,²⁹ and a discussion ensued between the parties. On May 17, 2019, the parties confirmed that that all residency and guardianship issues had been satisfactorily resolved.³⁰ The prehearing conference order was revised to include this information on May 18, 2019.³¹

On May 23, 2019, Guardian's Attorney filed a motion to withdraw.³² A status conference was immediately held, and it was determined that irreconcilable differences caused a breakdown in the Attorney/Client relationship. Further, the Guardian had been

²⁵ IHO-16, 18.

²⁶ IHO-14.

²⁷ IHO-19,

²⁸ IHO-22.

²⁹ IHO-23, 24.

³⁰ IHO-29.

³¹ IHO-30.

³² IHO-33.

provided with information regarding available legal services, and it was believed that the Guardian would be working with a family member who was an educational advocate.³³

The Order of Withdrawal was entered on May 24, 2019.³⁴ This order included a mandatory status conference. The Order of Withdrawal, the revised prehearing conference order, and the amended Standing Order with information regarding an advocate and was emailed to the Guardian.³⁵

The Parties confirmed by email that they would be available on May 24, 2019 at 3:30 p.m. and the status was reset.³⁶ At the status conference, the Guardian was present and confirmed her understanding of the five day disclosure rule and that she wished for the hearing to proceed as scheduled.³⁷

On May 28, 2019, the parties filed their exhibit and witness lists.

On May 30, 2019, the Hearing Officer requested a revised witness schedule providing that the advocate would testify at the start of the hearing, this would allow her to assist the Guardian during the remainder of the hearing.³⁸ A revised schedule was received on May 31, 2019.³⁹

The due process hearing took place on June 4, and 5, 2019 at the District Office located in ██████████, Illinois. An official court reporter was provided by the District for all

³³ IHO-34.

³⁴ Id.

³⁵ IHO-35, 40.

³⁶ IHO-39.

³⁷ IHO-41.

³⁸ IHO-44.

³⁹ IHO-45.

hearing dates. The hearing was closed to the public. The parties presented five joint witnesses, Guardian presented four witnesses, and the District called eight witnesses.⁴⁰

The parties entered into written joint stipulations of fact which were read into the record on June 5, 2019. The written stipulations were also admitted.⁴¹ The stipulated facts are as follows:

1. Student is a 10-year -old 5th grade student who was born on July 2, 2008.
2. Student and his guardians reside within the school boundaries of [REDACTED] community School District [REDACTED].
3. Student's home school is LTES,⁴² which serves approximately 720 students in grades 3,4, and 5.
4. Student first attended [REDACTED] community Unit Schools on August 29, 2017 as a transfer Student.
5. Student transferred into [REDACTED] Community Unit School District [REDACTED] from [REDACTED] School District [REDACTED].
6. Neuropsychologist⁴³ is a licensed Pediatric Neuropsychologist and is qualified to give expert opinion on the neuropsychiatric assessment and evaluation of children with disabilities.

At the conclusion of the evidence presentation, the IHO admitted the following exhibits:⁴⁴ For the School District: SD-1, SD-2, SD-4, SD-5, SD-6 (the same as P-1), SD-7, SD-8, SD-9, SD-10 (the same as P-2), SD-11, SD-12, SD-13, SD-14, SD-18, SD-21, SD-23, SD-24, SD-26, SD-28,⁴⁵ SD-29 (7-21). There was no SD-3 presented in the District's five-day disclosure. For the Parent: P-3, P-4, P-5(1-4)(6-8),⁴⁶ P-6, P-7, P-8, P-9, P-12, P-13, P-

⁴⁰ Personally identifiable information is in Appendix A.

⁴¹ IHO-46.

⁴² Personally identifiable information is in Appendix A.

⁴³ Personally identifiable information is in Appendix A.

⁴⁴ Each exhibit is identified as "P" for Parent, "SD" for the District, and includes the exhibit number and the specific page of the exhibit. Due to the complexity of the evidence presentation, a table of cross-referenced exhibits prepared by the Attorneys is attached as Appendix B.

⁴⁵ This is the same exhibit as P-(1-2).

⁴⁶ There was no page 5 in the exhibit.

14,P-15. All exhibits not specifically identified were withdrawn at the conclusion of evidence and testimony.

No written transcript has been provided and this decision is based on the IHO's personal notes and recollection. In rendering this decision, the IHO has considered all documents entered into evidence, testimony by the parties' witnesses, the parties' opening statements and closing arguments, the parties' suggested case law,⁴⁷ as well as independent research. This decision is issued within ten (10) calendar days, excluding Saturday, Sunday, and State holidays, after the hearing's conclusion, as required by Illinois law.⁴⁸

GUARDIAN'S ISSUES AND REMEDIES AND DISTRICT'S DEFENSES

Guardian's DPC raised the following issues, and this IHO certified the following issue at the PHC for adjudication at the due process hearing:

Issue One: Whether the District failed to adopt Student's previous April 13, 2017 IEP from the [REDACTED] School District, or hold an IEP meeting, in accordance with 20 USC §1414(d)(2)(C) and 23 Ill Admin Code §226. 50 when Student first enrolled in the school district in the Fall of 2017, and if so, was the Student denied a FAPE?

- i. Parent seeks the following remedy: A finding that the school district failed to either obtain proper consent from the parent/guardian to adopt the previous IEP or to schedule an IEP meeting, and therefore the IEP was not properly implement procedurally.
- ii. District raises the following defense: the District properly adopted Student's most recent IEP summary when Student transferred into the District without convening an IEP team meeting as allowed by Illinois law 23 Ill. Adm. Code 226.50(a)(1)(A).

⁴⁷ Copies of the closing statements and the supporting case law were provided to the IHO by the parties.

⁴⁸ 105 ILCS 5/14-8.02a(g55) & (h).

Issue Two: Whether the District failed to implement the April 13, 2017 IEP, in that the District failed to provide progress reports to Parent and failed to provide Student's speech language services with fidelity.

- i. Parents seeks the following remedy: A finding that the School District failed to provide progress reports to Parent and therefore there was a violation of FAPE. A finding that the District failed to provide Student's speech language services with fidelity and therefore there was a violation of FAPE.
- ii. District raises the following defenses: The District admits that formal IEP progress reports were not sent to the guardians at the beginning of the 2017-2018 school year. However, the School District affirmatively states that the guardians were apprised of the student's progress via other methods. The failure to send formal IEP progress reports to guardians was a procedural error that did not constitute a denial of FAPE. The School District also affirmatively states that the student was provided with all of his speech-language minutes and that those minutes were delivered with fidelity.

Issue Three: Whether the District failed to consider the Student's lack of progress toward annual goals in reading, writing and math, when it revised Student's May 8, 2018 IEP, and, if so, did this deny Student a FAPE.

- i. Parent seeks the following remedy: A finding that the District failed to properly consider the sufficiency of the May 8, 2018 IEP and to review it due to a lack of progress toward annual goals and a failure to Student to make reasonable progress toward meeting annual goals.
- ii. District raises the following defenses: A finding that Student made appropriate progress toward his annual goals and objectives that that the IEP team considered this data when reviewing/revising Student's IEP summary.

Issue Four: Whether the District failed to provide Student's individualized educational and related services as provided in the April 13, 2017 IEP, specifically small group or individualized instruction in math, reading and writing, and whether such failure denied Student a FAPE.

Issue Five: Whether the District failed to provide educational services, as provided in the May 8, 2018, IEP, specifically, did the District implement Student’s 300 mpw math instruction.

- i. Parent seeks the following remedy: See Proposed plan for compensatory education services filed by the Parent on April 30, 2019.
- ii. District raises the following defenses: The School District affirmatively states that the student was provided with all of his math instruction minutes as outlined in his IEP summary.

Issue Six: Whether the District failed to provide FAPE to Student. from August 29, 2017 to December 13, 2018.

- i. Parent seeks the following remedy: A finding that the District failed to provide FAPE to Student. Implementation of an IEP that provides necessary services to accommodate Student’s disability, along with necessary compensatory services to help him catch up with his peers.
- ii. District raises the following defense: A finding that the District provided Student with FAPE in the least restrictive environment (“LRE”).

Issue Seven: Whether the District failed to respond appropriately to a written request dated October 8, 2018, for an autism evaluation by the parent’s advocate.

- i. Parent did not seek any specific remedy.
- ii. District raises the following defense: District alleges that the emailed letter was not received.

Issue Eight: Whether the District failed to allow the parent/guardian/advocate to represent Student when it cancelled the Student’s IEP meeting scheduled for November 12, 2018. (This issue was withdrawn at the prehearing conference.)

Issue Nine: Whether the private evaluator selected by the Parents was mutually agreed by the Parties. (This issue was resolved between the parties and is moot).

The District's DPC raised the following issue, and this IHO certified the following issue at the PHC for adjudication at the due process hearing:

District's Issue One: Whether Student is entitled to an independent educational evaluation(s) (IEE at public expense). This issue was withdrawn by the District at the hearing.

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's findings of fact are as follows:

A. Background

1. Student is a ten (10) year old boy⁴⁹who attended LTES from August 29, 2017 to May of 2019 (5th and 6th grade).⁵⁰ LTES is on a trimester education calendar.⁵¹ In the fall of 2019, Student will attend the District middle school.

2. The Guardians have legal custody of Student and Student resides in the District.⁵²

3. Student was found to be eligible for special education services (IEP) due to speech and language concerns when he was in Kindergarten ⁵³ and was a resident of [REDACTED], Illinois.⁵⁴ In 2016, his residence was changed to [REDACTED], Illinois, where he was

⁴⁹ Personally identifiable information is in Appendix A.

⁵⁰ Personally identifiable information is in Appendix A.

⁵¹ Director Testimony.

⁵² Stipulations of fact.

⁵³ SD7-2.

⁵⁴ Guardian testimony.

educated for his 2nd and 3rd grade years.⁵⁵ His final IEP from [REDACTED] (“[REDACTED] IEP”) was developed on April 13, 2017.⁵⁶

4. Student was diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”) in May of 2015.⁵⁷ The Guardian suspected Student may be autistic but that has been ruled out.⁵⁸

5. Student is described as athletic.⁵⁹ In fourth grade he was fun, outgoing, assimilated, and knew and understood the rules and expectations.⁶⁰ Student’s fifth grade teacher described him as a “doer.”

B. Registration in District. August 2017-September 2017.

1. Student was registered in the District on August 26, 2017 by his Guardian. At the time of registration, the Guardian provided a copy of Student’s [REDACTED] IEP to the District.⁶¹ After registration, Student was assigned to Case Manager 1.⁶² A printed copy of Student’s IEP was placed into Case Manager 1’s school mail box.⁶³ Case Manager 1 made copies and gave a copy to the Speech Pathologist⁶⁴ and Gen Ed Teacher 1.⁶⁵ She then gave a “move-in sheet” to the Director’s assistant to enter Student’s general information in the SpedTrack⁶⁶ system.⁶⁷ Case Manager 1 notified the School Psychologist⁶⁸ who noted that Student’s triennial re-evaluation was due in the Spring of 2018 and put that in her personal record system.⁶⁹

⁵⁵ SD7-2.

⁵⁶ SD-6.

⁵⁷ SD7-2.

⁵⁸ SD9-1.

⁵⁹ Director Testimony.

⁶⁰ Gen-Ed Teacher 1 Testimony.

⁶¹ Mother testimony.

⁶² Personally identifiable information in in Appendix A.

⁶³ Case Manager 1 testimony and SD-6.

⁶⁴ Personally identifiable information is in Appendix A.

⁶⁵ Personally identifiable information is in Appendix A. Case Manager 1 Testimony. Gen Ed Teacher 1 testified she “believed” she received a copy of the IEP. See FOF D-2 infra.

⁶⁶ This is the District’s computer record system.

⁶⁷ Case Manager 1 testimony.

⁶⁸ Personally identifiable information is in Appendix A. Case Manager 1 testimony. Note: School Psychologist believed she was told about Student from the Director’s assistant.

⁶⁹ School Psychologist Testimony.

2. The Director became aware of Student's presence in the District when her assistant received the move-in sheet. She was also aware that Student had provided the [REDACTED] IEP.⁷⁰ The Director's assistant entered Student's general information⁷¹ into the SpedTrack, and it then became the Case Manager 1's responsibility to enter the Student's goals and objectives into the program.⁷² The Case Manager failed to enter Student's IEP goals and objectives into the program.⁷³ The IEP was in the SpedTrack program in March of 2018 when the domain meeting was held.⁷⁴

3. The Guardian was experienced in the transfer of an IEP between districts in Illinois.⁷⁵ She believed that once the IEP had been provided to the District, that the District would notify her of an IEP meeting.⁷⁶ The Guardian did not hear from the District.⁷⁷ The Guardian contacted a school secretary who told her that someone would get back to her. When she heard nothing, she called again and was told that the District was still waiting for records from [REDACTED].⁷⁸ She then contacted [REDACTED] and authorized them to send the records.⁷⁹ The only contact information the Guardian had was the name of Student's Gen-Ed Teacher 1.⁸⁰ She contacted Gen-Ed Teacher 1, who told her she was unaware Student was in special education but would let the correct person know.⁸¹

4. The Director acknowledged receipt of Student's [REDACTED] school records and believed that on September 1, 2017, Student's [REDACTED] IEP was implemented by the District. There were no services in the [REDACTED] IEP that could not be implemented at LTES.⁸²

⁷⁰ Director testimony and SD-6.

⁷¹ This would include demographics and testing accommodations.

⁷² Director testimony.

⁷³ Director testimony. Case Manager testified she believed she entered Student's IEP into the system but could not recall specifically doing it and based her belief on the fact that others were aware of the IEP.

⁷⁴ Case Manager 1 Testimony.

⁷⁵ Guardian Testimony.

⁷⁶ Guardian Testimony.

⁷⁷ Guardian Testimony.

⁷⁸ Guardian Testimony.

⁷⁹ Guardian Testimony.

⁸⁰ Personally Identifiable information is in Appendix A.

⁸¹ Guardian Testimony.

⁸² Director Testimony.

5. The District policy is that it does not call an IEP meeting for a new student's outside-District IEP unless a parent expresses dissatisfaction with the IEP.⁸³ Case Manager 1 believed that a letter was sent to the Guardian explaining what Student's services would look like at the District. Following Student's enrollment in the District, the Guardian did not express any dissatisfaction with the [REDACTED] IEP, and the District determined that it could deliver the services provided in the [REDACTED] IEP.⁸⁴

6. In August of 2017, the District was notified by a special education teacher that he was resigning.⁸⁵ The District was unable to replace this teacher.⁸⁶ This left the District without a teacher in the functional life skills classroom.⁸⁷ There were 17 students in special education and 4 in the functional life skills class.⁸⁸ Case Manager 1 was the 4th grade support services teacher.⁸⁹ The functional life skills classroom initially had substitute teachers for the first few weeks.⁹⁰ Case Manager 1 pursued the position as the teacher in the functional life skills classroom. In October of 2017, Case Manager 1 agreed to teach the functional life skills class, be the case manager for the 23 students in special education, and supervise the special education classroom.⁹¹ Substitute became the teacher in the special education classroom,⁹² and Case Manger 1 became the "teacher of record" for the special education class.⁹³ Substitute received her degree in special education, but did not student-teach and was not licensed as a teacher. Substitute was previously an aide in the special education classroom and did receive a substitute teacher license.⁹⁴ Director testified Substitute could only teach for 120 school days and was then replaced by another substitute.⁹⁵ Case Manager 1 agreed to this room switch. The Director told Case Manager 1

⁸³ Director Testimony.

⁸⁴ Director Testimony.

⁸⁵ Case Manager 1 Testimony.

⁸⁶ Director and Case Manager 1 Testimony.

⁸⁷ Director Testimony.

⁸⁸ Director Testimony.

⁸⁹ Director Testimony.

⁹⁰ Director Testimony.

⁹¹ Director Testimony.

⁹² Director Testimony.

⁹³ Case Manger 1

⁹⁴ Case Manager 1 Testimony. Illinois State Board of Education records show a SUB license issued on 8/14/2017.

⁹⁵ Director Testimony. Director could not recall who replaced Substitute. When Student was observed by the School Psychologist for his re-evaluation on May 7, 2018, she identified Substitute as his teacher. (SD10-3)

to send a communication using the Skyward⁹⁶ system.⁹⁷ Case Manager 1 stated that she sent a letter home to the parents explaining that she would continue to be the case manager but that she would not be going into the classroom on a day to day basis, and that concerned parents could contact her for information.⁹⁸ Guardian did not receive this document.⁹⁹

C. [REDACTED] IEP

1. Student's last IEP prior to entering the District was developed in [REDACTED] on April 13, 2017.¹⁰⁰

2. The [REDACTED] IEP listed Student's present levels of academic performance ("PLOP") (including strengths and areas needing improvement) as follows:

a. The reading PLOP noted that on the reading portion of the NWEA given in winter 2017 [Student] scored 193 (43%). "[Student] needed a significant amount of prompting to read all passages and questions thoroughly before selecting an answer." Per Fountas and Pinnell benchmarking system [Student] was reading instructionally at beginning third level M. At this level Student can decode text and read fluently but struggles to answer comprehension questions when not presented with a multiple format.¹⁰¹

b. In written expression it was reported: "[Student] continued to need 1:1 support to understand the writing process, what the topic is asking of him and getting his ideas down with enough relevant details without being repetitive."¹⁰² Student uses capitalization and punctuation, is able to add details at the sentence level when using the who, what, where and when format and visual cues.¹⁰³

c. The math PLOP provided that on the "NWEA given in the winter of 2017, [Student] scored 176 (5%). [Student] also needed a significant amount of prompting to read all passages and questions thoroughly before selecting an answer on this test." Student works in a small group for math where concepts are taught at a slower pace with multiple days of exposure to concepts. Even with this format [Student] struggles to understand the grade level math concepts of multiplication, division, fractions and word problems. Further, [REDACTED] noted that the district "added a direct instruction math program to [Student's] day to help him work on concepts of counting, place value, addition, subtraction, time, money, simple story problems etc."¹⁰⁴

⁹⁶ Skyward software is used by the District to communicate with parents.

⁹⁷ Director Testimony.

⁹⁸ Case Manager 1 Testimony. This document was not produced during the hearing.

⁹⁹ Guardian Testimony.

¹⁰⁰ SD6-1.

¹⁰¹ SD6-2. Note: third level M translates to 3.2 on the F & P reading level chart.

¹⁰² SD6-2.

¹⁰³ SD6-2.

¹⁰⁴ SD6-2.

d. For Science/Social Studies it was noted that Student has a “tough time” because there is a lot of reading involved, so because comprehension is a struggle for [Student] he often is confused and unsure of the concepts that he is learning.¹⁰⁵

e. Speech/Language communication stated: “[Student] received speech-language therapy 2x/week. Student was found to need verbal reminders to listen to the entire direction before starting a task. Directions needed to be broken down into parts to reduce impulsivity.” Student’s narratives were found to be not in chronological order and his use of vague terminology when describing make it difficult to follow along. Student will continue to benefit from speech-language therapy.¹⁰⁶

f. Social-emotionally, Student was noted to be getting into arguments with peers.¹⁰⁷

g. Vocationally, Student was found to be off task very easily. Student is sometime unsure how to complete the task or what question to ask in order to finish an assignment. “[Student] benefits from having a teacher/assistant working one on one with him so he can stay on task and understand what he needs to do.”¹⁰⁸

3. Student was provided with 5 goals: two language goals, to be implemented by the speech language pathologist;¹⁰⁹ one writing goal;¹¹⁰ one reading goal;¹¹¹ and one math goal.

¹¹² All goals were to be implemented by the classroom teacher.¹¹³

4. Student was to receive the following accommodations: “Preferential seating, simplified directions, paraphrase/restate directions or have student paraphrase to ensure understanding, small group or 1:1 testing, graphic organizers for writing, math resources, breaks, extra time, cueing to slow down and read all test items.”¹¹⁴ Student was to participate in classroom assessments with accommodations, including the PARCC assessment with accessibility features turned on in advance and/or accommodations,¹¹⁵ and Student was to receive extended time until the end of the school day to complete a single test unit.¹¹⁶

¹⁰⁵ SD6-2.

¹⁰⁶ SD6-3.

¹⁰⁷ SD6-3.

¹⁰⁸ SD6-3.

¹⁰⁹ SD6-(4-7).

¹¹⁰ SD 6-(8-9).

¹¹¹ SD 6-(10-11).

¹¹² SD 6-(12-13).

¹¹³ SD6-(8-13).

¹¹⁴ SD6-14.

¹¹⁵ SD6-16.

¹¹⁶ SD6-19.

5.. Student was to receive 100 minutes of writing assistance inside the general education classroom.¹¹⁷ Further, he was to receive special education services outside the general education classroom of 150 minutes weekly in reading, 240 minutes monthly of speech and language, and 300 minutes weekly of math.¹¹⁸

D. Student in District #3: September 2017-May 2018.

1. The District uses a software program called Skyward to communicate with parents.¹¹⁹ Guardian’s information was not in the Skyward system and Guardian did not receive a password to access Student’s information.¹²⁰ Guardian was unaware that she was not receiving information from the District until after Student’ first trimester report card was issued and she did not receive it.¹²¹ Eventually, the issue was corrected and Guardian was able to receive information.¹²²

2. Student was placed in the general education classroom staffed by Gen-Ed Teacher 1¹²³ and an aide. The classroom contained 27-28 students.¹²⁴ The teacher, aide, and the special education teacher coordinate to provide services to students with IEPs.¹²⁵ Gen-Ed Teacher 1 believed she was given a copy of Student’s IEP.¹²⁶ Student received reading, writing, social studies, and science in the general education classroom and was “pulled out” for math.¹²⁷ She was unsure of the number of special education minutes Student received, but remembered that Case Manager 1 would take Student for reading from 9:15 a.m. – 10:00 a.m.¹²⁸ Gen-Ed Teacher 1’s testimony at hearing revealed:

a. Gen-Ed Teacher 1 testified that Case Manager 1 was Student’s math teacher or he received math with a special education aide.¹²⁹

b. Gen-Ed Teacher 1 was not responsible for the implementation of Student’s goals, she only provided the first level (Tier 1) instruction and implemented any accommodations.

¹¹⁷ SD6-20.

¹¹⁸ SD6-20.

¹¹⁹ Guardian and Director Testimony.

¹²⁰ Guardian Testimony.

¹²¹ Guardian Testimony.

¹²² Guardian Testimony.

¹²³ Personally identifiable information is in Appendix A.

¹²⁴ Gen-Ed Teacher 1 Testimony.

¹²⁵ Gen-Ed Teacher 1 Testimony.

¹²⁶ Gen-Ed Teacher 1 Testimony.

¹²⁷ Gen-Ed Teacher 1 Testimony.

¹²⁸ Gen-Ed Teacher 1 Testimony.

¹²⁹ Gen-Ed Teacher 1 Testimony.

i. Gen-Ed Teacher 1 could not recall seeing Student's Goal 3, which required implementation by the classroom teacher.¹³⁰

ii. Gen-Ed Teacher 1 did not know that the classroom teacher was responsible for the implementation of Student's Goal 5, which was a math goal.¹³¹

c. Gen Ed Teacher 1 testified that she, the classroom aide, and Case Manager 1 would discuss units and the support a child would need for a particular subject,¹³² and that she met with the special ed teacher weekly. Though she could not recall any specific discussions with the special ed teacher, she believed they had discussed Student's progress. There are no records of these conversations.¹³³

d. Gen Ed Teacher 1 was responsible for entering Student's science and social studies grades on his report card.¹³⁴ The grades entered which are not followed by the letter "M," would indicate that the curriculum was not modified according to Student's IEP.¹³⁵ She could not explain why Student did not have grades for Trimester 1 and 2 in English Language Arts, and stated that Case Manager 1 would grade Student's work and enter the grades for English Language Arts and Math.¹³⁶ Gen Ed Teacher 1 thought that Guardian might have tried to contact her, and may have asked about Student's progress reports.¹³⁷

e. Gen Ed Teacher 1 believed Student was making progress.¹³⁸

3. The Speech Pathologist¹³⁹ met Student on September 3, 2017. She had received a copy of the [REDACTED] IEP from Case Manager.¹⁴⁰ Speech Pathologist provided 240 minutes per month of speech and language service, which was divided into 60 minutes per week.¹⁴¹ During these sessions, Student worked on two goals: a narrative language goal,¹⁴² and an expressive language goal.¹⁴³ Student made progress on the narrative language goal, including answering literal "WH" questions with minimal prompting.¹⁴⁴ Student was still working on inferential questions.¹⁴⁵ Student made progress on his expressive language goal.¹⁴⁶ Speech Pathologist's progress reports on goals were provided to Case Manager 1.

¹³⁰ Gen-Ed Teacher 1 Testimony and SD6-8.

¹³¹ Gen-Ed Teacher 1 Testimony and SD6-12.

¹³² Gen-Ed Teacher 1 Testimony.

¹³³ Gen-Ed Teacher 1 Testimony.

¹³⁴ Gen-Ed Teacher 1 Testimony and PD9-2 (SD28-2).

¹³⁵ SD28-(1-2). The key for the report card indicates that the letter "M" shows a modified curriculum.

¹³⁶ PD9-1 (SD28-1).

¹³⁷ Gen-Ed Teacher 1 Testimony.

¹³⁸ Gen-Ed Teacher 1 Testimony.

¹³⁹ Personally identifiable information is in Appendix A.

¹⁴⁰ Speech Pathologist testimony.

¹⁴¹ Speech Pathologist testimony and SD6-20.

¹⁴² SD 6-4.

¹⁴³ SD6-6.

¹⁴⁴ Speech Pathologist Testimony.

¹⁴⁵ Speech Pathologist Testimony.

¹⁴⁶ Speech Pathologist Testimony.

For Trimester 1 and 2, Case Manager provided a verbal progress report, and for Trimester 3 she entered the progress report into SpedTrack.¹⁴⁷

4. In December 2017, Guardian called requesting to talk to someone. Case Manager 1 returned the call and left a message.¹⁴⁸ When Guardian spoke to Case Manager 1, she provided Guardian no information on services and stated she would call back.¹⁴⁹ Case Manager 1 recalled a telephone conversation but could not recall when it took place and believed it was to notify Guardian of the domain meeting in March 2018.¹⁵⁰

5. Guardian did not hear from Case Manager 1 until the beginning of February 2018. Guardian's complaint at this point was that Student's spelling words were not being modified and were too difficult, which resulted in Student being bullied by classmates for failing student-graded spelling tests.¹⁵¹ Case Manager 1 appeared to be surprised and stated she would check into the situation.¹⁵² Guardian requested a full evaluation of Student to determine what was going on. She also requested a central auditory processing test.¹⁵³

6. School Psychologist contacted Case Manager 1 to let her know it was time for a re-evaluation.¹⁵⁴ On February 27, 2018, Case Manager 1 sent the Parent/Guardian notification of IEP conference scheduled for March 7, 2018. This was less than 10 days prior to the scheduled IEP meeting, and no waiver of the 10-day notice requirement was received from Guardian.

7. On March 7, 2018, the IEP team met to discuss domains for Student's triennial re-evaluation.¹⁵⁵ Student's substitute teacher was not invited to this meeting.¹⁵⁶ This was the Guardian's first meeting with the IEP team.¹⁵⁷ Guardian requested a re-evaluation, but

¹⁴⁷ Speech Pathologist Testimony

¹⁴⁸ Guardian Testimony.

¹⁴⁹ Guardian Testimony.

¹⁵⁰ Case Manager 1 testimony.

¹⁵¹ Guardian testimony.

¹⁵² Guardian Testimony.

¹⁵³ Guardian Testimony.

¹⁵⁴ School Psychologist Testimony.

¹⁵⁵ SD5.

¹⁵⁶ SD5-2. Note: There was no evidence submitted as to who was substitute teaching at the time of the March 7, 2018 domain meeting and Student's substitute was not required to be at this meeting

¹⁵⁷ Guardian Testimony. Case Manager 1 is listed as the special education teacher.

the School Psychologist¹⁵⁸ felt that Student's IQ was stable and that there was no need for a full re-evaluation. Case Manager 1 agreed with the Guardian and School Psychologist agreed to complete the re-evaluation.¹⁵⁹ Guardian requested a central auditory processing assessment, but was told by the Speech Pathologist that the District did not do this assessment.¹⁶⁰ Student was due for the triennial assessment and the team requested a speech/language evaluation.¹⁶¹ Guardian advised the team that Student was shutting down because he was overwhelmed by the schoolwork and could not complete it.¹⁶² Guardian provided team with examples of school work which was not modified, including a social studies capital worksheet and spelling words.¹⁶³ The Speech Pathologist recommended that Student's minutes of speech pathology be cut, but agreed to do the speech pathology assessment.¹⁶⁴ On March 12, 2018, there was a correction made to the Conference Summary Report page correcting the domain meeting from May 7, 2018 to March 7, 2018. This was discussed with Guardian on March 14, 2018, and a copy of the corrected document was sent in Student's backpack.¹⁶⁵

8. Substitute was responsible for issuing Student's progress note, under the supervision of Case Manager 1.¹⁶⁶

9. The District places responsibility to send out progress reports on the case manager. Case Manager 1 kept her own progress list, and sent progress notes on all of her students.¹⁶⁷ She did not specifically recall preparing a progress report for Student, but believed every student on her progress list received a progress note.¹⁶⁸ Case Manager 1 entered the progress notes into the Spedtrak system.¹⁶⁹ The District admits that there was no progress report issued for Student for the Fall of 2017 and the Winter of 2018.¹⁷⁰

¹⁵⁸ Personally identifiable information is in Appendix A.

¹⁵⁹ Case Manager 1 and Guardian testimony.

¹⁶⁰ Guardian Testimony.

¹⁶¹ Speech Pathologist testimony.

¹⁶² Guardian Testimony.

¹⁶³ Guardian testimony.

¹⁶⁴ Guardian testimony.

¹⁶⁵ SDS4-7 and PD3-5. Note: Guardian testified she found the document balled up in the bottom of Student's backpack; she believed it was the May 2018 IEP, however, it may have been this document.

¹⁶⁶ Case Manager 1 Testimony.

¹⁶⁷ Case Manager 1 Testimony.

¹⁶⁸ Case Manager 1 Testimony.

¹⁶⁹ Case Manager 1 Testimony.

¹⁷⁰ Director testimony.

10. On May 8, 2018, the IEP team met; this was almost 13 months after the April 13, 2017 IEP. There are three slightly different copies of the May IEP in the evidence record.¹⁷¹ Guardian was not provided with a copy of Student's Psychological evaluation prior to the meeting.¹⁷²

a. Initially, the IEP team reviewed the evaluation results:

i. School Psychologist noted that Student's current academic data shows he continued to perform significantly below his grade level peers in the areas of reading comprehension, math computation, math problem-solving, and written expression.¹⁷³

ii. Student was given the Kaufman Test of Educational Achievement, Third Edition (KTEA-3), to assess his current levels of academic functioning. In the areas of reading and writing, his results fell mainly in the below average range, with strengths in letter and word recognition and decoding, which fell in the average range. Reading comprehension was a challenge, especially when answers were inferential.¹⁷⁴

iii. Progress monitoring data was reviewed, in math computation ("MCOMP") at the 3rd grade level and in applied problem solving at the 2nd grade level. "[Student's] data shows he is not making sufficient progress in [math computation], and is currently performing below the 10th percentile when compared to 3rd grade students nationally. In Math applied problem solving ("MCAP") [Student] is making progress when compared to 2nd grade students nationally and is typically performing between the 10th and 25th percentile. In reading compared to 4th grade student's nationally, he was consistently performing below the 10th percentile". The data report then refers the reader to the progress monitoring graphs for more information.¹⁷⁵

aa. Case Manager 1 was responsible for entering the progress monitoring data into the Student's profile.¹⁷⁶ The Student progress monitoring data does

¹⁷¹ PD3, SD4, and SD 2. PD3 is the copy which was given to the Guardian at the end of the IEP meeting, SD4 is the copy as finalized in the District's computer in May of 2018, and SD2 is the Amended document following a resolution meeting in December, 2018.

¹⁷² Guardian Testimony.

¹⁷³ PD3-2 and SD4-4.

¹⁷⁴ PD-32 and SD4-4.

¹⁷⁵ PD3-2 and SD4-4. Note the Guardian did not have a copy of the graphs attached to her exhibit.

¹⁷⁶

not begin until week 20 for MCAP,¹⁷⁷ MCOMP,¹⁷⁸ DAZE.¹⁷⁹ Student's DIBELS was progress monitored at week 2, 20 and 32.¹⁸⁰

b. At the meeting, Student's Present level of Academic Achievement was reviewed:

i. [Student's] Measures of Academic Progress (MAP) scores have fallen below the 5th percentile in both reading and math since the beginning of the school year. His most recent scores from winter of 2018 fell to the 1st percentile in math and 3rd percentile in reading."¹⁸¹ Student's Aimsweb math was being progress monitored at the 3rd grade level for math computation and at the 2nd grade level for applied problem-solving.¹⁸²

ii. Aimsweb written expression indicated Student's writing samples were extremely variable.¹⁸³

iii. the Dibels Daze score revealed that Student's winter benchmark yielded an adjusted score of 9, which falls at the 23-28th percentile for 4th grade. However, it was noted that Student's high error rate shows he is guessing and not comprehending what he is reading.¹⁸⁴

iv. Student's March 2015 Kaufman Test of Educational Achievement, 2nd edition (KTEA-II), from [REDACTED], was reviewed.¹⁸⁵

v. In speech/language it was reported Student made improvements with his ability to answer literal "wh" questions but continued to exhibit difficulty answering inferential "wh" questions correctly.¹⁸⁶

c. Student's Speech/Language Evaluation was reviewed. The exact dates the evaluation was completed are uncertain.¹⁸⁷ The Speech Pathologist used boilerplate introductions to identify the tests administered. In doing so, she included the name of another student, "[REDACTED]", in describing one of the tests administered.¹⁸⁸ She testified that the test results are valid for the Student and that she agrees with the results as written.¹⁸⁹ Student received a Speech Language Evaluation on April 1, 2019¹⁹⁰ at the University of

¹⁷⁷ SD4-28, 4-29, 4-32, 4-33,.

¹⁷⁸ SD4-30.

¹⁷⁹ SD4-34.

¹⁸⁰ SD4-27.

¹⁸¹ SD2-3.

¹⁸² SD2-3.

¹⁸³ SD2-3.

¹⁸⁴ SD2-3.

¹⁸⁵ SD 2-3.

¹⁸⁶ SD2-3.

¹⁸⁷ Date of Evaluation 3/27/2018, 04/18. Speech Pathologist testimony.

¹⁸⁸ SD13-3.

¹⁸⁹ Speech Pathologist

¹⁹⁰ SD8-1.

Illinois ("U of I"). The summary and diagnosis from the U of I evaluation¹⁹¹ is similar to the Speech Pathologist's findings in 2018.¹⁹² The Speech Pathologist wanted to reduce Student's minutes from 60 mpw to 40 mpw. Guardian requested that the Speech Goal be increased because she believed Student needed additional assistance in this area.¹⁹³ The Team agreed with the Speech Pathologist's recommendations and reduced Student's speech language minutes to 40 mpw.¹⁹⁴

d. Student's social work re-evaluation was reviewed.¹⁹⁵ The re-evaluation was an update only and consisted of a review of documents and a telephone interview with the Guardian.¹⁹⁶ The interview document did not contain a specific date, only April 2018.¹⁹⁷ Guardian did not discuss providing any social work minutes for Student during the interview.¹⁹⁸

e. Student's Psychoeducational Evaluation was reviewed.¹⁹⁹ In developing the evaluation, School Psychologist reviewed all of Student's historical information, including previous IEPs and evaluations, interviewed teachers and guardians, and made classroom observations.²⁰⁰

i. During the Student's testing, Student was cooperative and polite; he wanted to please the examiner and tried his best on all tasks involved.²⁰¹

ii. Student was interviewed and told the examiner that "he does not get extra help at school, but sometimes [a teacher's aide] comes over to see if he needs anything."²⁰²

iii. Student was observed on four separate occasions:

¹⁹¹ SD8-9.

¹⁹² Speech Pathologist Testimony and SD13-(3-4).

¹⁹³ Guardian testimony.

¹⁹⁴ Speech Pathologist Testimony and SD4-24.

¹⁹⁵ Social Worker Testimony.

¹⁹⁶ Social Worker Testimony.

¹⁹⁷ SD11-1.

¹⁹⁸ Social Worker Testimony.

¹⁹⁹ School Psychologist and SD10-1.

²⁰⁰ School Psychologist Testimony.

²⁰¹ SD10-5.

²⁰² School Psychologist testimony and FOF 10-5.

aa. On April 27, 2018, he was observed in small reading group pull-out, within the special education classroom, where he was working on his spelling words independently, followed by a Wonders reading lesson. Later that day, Student was observed in the general education classroom. Student used a chromebook to access an education website to listen to a story on headphones and read a novel to himself (which consisted mostly of looking around the room with the book open). Gen Ed 2 Teacher gave him his work packet and explained he needed to stay on topic. Student continued to write about unrelated topics. "He did not seem to understand."²⁰³ It was not noted whether Student's material had been modified as required by the [REDACTED] IEP.

bb. On May 7, 2018, Student was observed in Math, small group. Student's small group consisted of 4 (normally 5) students, there was a second group of 5 students working with an aide. Substitute gave the student's a math sheet to start independently, then reviewed it with the group. Student did not volunteer answers, but did answer correctly when called upon. The group, in general, was off task.²⁰⁴ Later that day, Student was observed in the computer lab. He was found to be on task 73% of the time, compared to peers who were on task 87.5% of the time. Student needed directions repeated and did a nice job of raising his hand and asking for help.²⁰⁵

f. Guardian testified she did not receive a copy of the Psychological evaluation until the meeting, Guardian was an active participant in the IEP conference, discussing the evaluations and sharing her concerns.²⁰⁶ Guardian was concerned about Student's transition to 5th grade.²⁰⁷ Guardian was in agreement with the IEP as proposed.²⁰⁸

g. Case Manager 1 was present and helped develop Student's goals. Her input was based on Student's progress monitoring, and information from Student's Substitute.²⁰⁹

²⁰³ FOF10-3.

²⁰⁴ SD10-4.

²⁰⁵ SD10-4.

²⁰⁶ School Psychologist Testimony.

²⁰⁷ School Psychologist Testimony.

²⁰⁸ School Psychologist Testimony.

²⁰⁹ Case Manager 1 Testimony. There is no evidence that Case Manager 1 ever discussed student with the replacement substitute

h. Gen-Ed Teacher 1 was present and gave a general statement and a little background on Student. She provided no further contribution.²¹⁰

i. The Speech Pathologist did not believe Student needed extended school year (“ESY”). Student did not receive ESY for 2018.²¹¹

j. Case Manager 1 denied that she was responsible for the handwritten notes on Student’s May 9, 2018 IEP.²¹²

k. The Director could not explain why there were three different versions of Student’s May 2018 IEP.²¹³

11. Case Manger 1 was responsible for providing Student’s grades in the areas where Student had a goal (reading, math, and writing).²¹⁴ Case Manager 1 set up Student’s schedule, which provided during the 2017-2018 school year Student receive 300 minutes per week (“mpw”) in math, 150 mpw in reading comprehension, and 30 mpw of guided reading group in the resource room.²¹⁵

12. The first progress report Guardian received was on May 25, 2018.²¹⁶

E. August 2018 - Current.

1. For Student’s 5th grade year, Student was placed in Gen-Ed Teacher 2’s classroom. There were 25 children in the classroom, including 5 special education students.²¹⁷ Gen-Ed Teacher 2 is a supported teacher, meaning that there are support staff present to assist with the students.²¹⁸ Gen-Ed Teacher 2 met with Case Manager 2 once a week, on Tuesdays, to discuss the students.²¹⁹

²¹⁰ Gen-Ed Teacher 1 Testimony.

²¹¹ Guardian testimony. It is noted the [REDACTED] IEP did provide Student ESY services.(SD6-21).

²¹² PD3-25.

²¹³ Director Testimony. The Parent had one version (PD- 3), District had one version (SD2), and there was the corrected version from December 2018 resolution meeting (SD-4).

²¹⁴ Case Manager 1 Testimony.

²¹⁵ Case Manager 1 testimony.

²¹⁶ Guardian Testimony and SD24-5.

²¹⁷ Gen-Ed Teacher 2 Testimony. That number was later reduced to 4.

²¹⁸ Gen-Ed Teacher 2 Testimony

²¹⁹ Gen-Ed Teacher 2 Testimony

2. For Student's 5th grade year, Student was assigned to Case Manager 2, who was also his resource teacher.²²⁰ Case Manager 2 co-teaches with the general education teacher and they work together on one lesson. If she sees a student struggling, they reassess the student's needs.²²¹ Case Manager 2 reviewed Student's corrected May 2018 IEP, and testified credibly that she provided Student with 300 mpw in math and that the number of minutes stated is the number of minutes that she implemented.²²² She admitted that the IEP she reviewed initially, August 2018, did not have the minutes and that she had to ask how many minutes Student was entitled to receive, and she regretted not calling this omission to someone's attention in August or September 2018.²²³

a. Case Manager 2 believed that Student made academic progress in Math facts and concrete math.²²⁴ Student's Spring 2019 Map RIT scores in math show 23 points, and his projected progress at the beginning of the year was only 10 points.²²⁵ Student was progress-monitored at the 3rd grade level for math computation. Student initially started at 5 points and went up to 17 points: this evidenced growth.²²⁶ In math concepts and applications, Student was progress-monitored at the second-grade level the beginning of the school year,²²⁷ and at week 17 progress-monitoring began at the 3rd grade level. Again, evidencing growth.²²⁸

b. Case Manager 2 believed Student's Map scores in reading show progress during the school year. Student was projected to make 12 points of growth, but instead made 23 points of growth.²²⁹ This high level of growth compensated for the lack of growth in Spring 2018 and resulted in a net gain of 18 points.²³⁰ The DAZE comprehension reading was progress monitored at 4th grade and shows inconsistent performance, but

²²⁰ Case Manager 2 Testimony.

²²¹ Gen-Ed Teacher 1 Testimony.

²²² Case Manager 2 Testimony and SD4-24.

²²³ Case Manager 2 Testimony and PD3-25.

²²⁴ Gen-Ed Teacher 1 Testimony.

²²⁵ Case Manager 2 Testimony and SD26-1.

²²⁶ Case Manager 2 Testimony and SD26-2.

²²⁷ Case Manager 2 Testimony. SD26-4.

²²⁸ Case Manager 2 Testimony. SD26-5.

²²⁹ Case Manager 2 Testimony. SD 26-1.

²³⁰ SD26-1.

progression.²³¹ Aimsweb RCBM (reading aloud) was monitored at 5th grade level and shows Student can read the words.²³²

c. Case Manager 2 has always done progress reports, complete with comments, and provided progress reports for Student.²³³ This lets Case Manager 2 know whether the implemented modifications are working or if changes are necessary.²³⁴ Progress notes are not the only documents which are used to assess if a strategy or modification is working, so not having a progress note would not be concerning.²³⁵

3. Guardian was hospitalized in October of 2018 and the G-Grandmother was helping to care for Student.²³⁶ G-Grandmother had the opportunity to review Student's graded classwork, which indicated that Student either did not receive help or refused help, resulting in Student receiving "F"s on this classwork.²³⁷ G-Grandmother sent a fax to Gen Ed Teacher 2 advising that Student would be out of school for a few days and requesting all Student's in school work and homework for the following week.²³⁸ The fax arrived at 11:23 a.m. on Friday, October 19, 2018.²³⁹ During the 3 ½ hours between the fax being received at LTES and student dismissal, Gen Ed Teacher 2 was unable to gather the classroom and homework assignments. However, Gen Ed Teacher 2 did fax the classroom and homework materials to G-Grandmother at 3:52 p.m.²⁴⁰ The assignment page is handwritten and provided online sites to access reading information; these were classroom assignments, they were not homework assignments.²⁴¹ Further, the assignment sheet stated that "Some assignments will not 'work' to send via email or fax." We will catch [Student] up at school when he returns with those things. Thanks for your help."²⁴² Gen-Ed Teacher 2 said the "we" in her mind was the team.²⁴³ G-Grandmother was offended by this statement and felt

²³¹ Case Manager 2 Testimony. Sd26-3.

²³² Case Manager 2 Testimony. SD26-6.

²³³ Case Manager 2 Testimony and SD24-5.

²³⁴ Case Manager 2 Testimony.

²³⁵ Case Manager 2 Testimony.

²³⁶ G-Grandmother Testimony.

²³⁷ G-Grandmother Testimony.

²³⁸ Personally identifiable information is in Exhibit A.

²³⁹ G Grandmother Testimony and Gen-Ed Teacher 2 Testimony and PD8-1 and PD8-4.

²⁴⁰ Gen-Ed Teacher 2 Testimony and PD12-1.

²⁴¹ Gen-Ed Teacher 2 Testimony and PD12-3.

²⁴² PD12-3.

²⁴³ Gen-Ed Teacher 2 Testimony.

it implied that she could not help her Great-Grandson (Student).²⁴⁴ Once the homework was received, it became apparent that Student was unable to complete the assignments due to his inability to access the materials online.²⁴⁵ G-Grandmother did not ask Student or Guardian for access to Student's account.²⁴⁶ Additionally, she determined that the material was over Student's capability.²⁴⁷

4. On October 20, 2018, G-Grandmother sent a letter of complaint, using a service called "Hello Fax,"²⁴⁸ to the Principal,²⁴⁹ Asst Principal,²⁵⁰ and Director.²⁵¹ Both the Director and Principal did not recognize the Hello Fax and deleted the document.²⁵² Asst Principal did open the email and determined that if you search the document you could find a link to the letter.²⁵³ The letter was brought to the Principal's attention, but he did not address the issue presented and felt Asst. Principal would handle the matter.²⁵⁴ The issues raised were discussed with G-Grandmother and Asst. Principal offered to provide the textbook, but it had already been purchased by G-Grandmother. Asst. Principal believed the issues were resolved.²⁵⁵

5. On October 22, 2018, the G-Grandmother sent three letters to the Principal²⁵⁶ and Director,²⁵⁷ again using Hello Fax. This first letter requests to cancel the request of October 20, 2018 and specifies that "I will be sending you two additional letters to 1) request an IEP review Meeting and 2) evaluations."²⁵⁸ An additional letter dated October 22, 2018 requests an IEP meeting.²⁵⁹ A third letter, also dated October 22, 2018, states that the Guardian disagrees with Student's previous evaluations and testing and requests

²⁴⁴ G-Grandmother Testimony and PD13-4.

²⁴⁵ G-Grandmother Testimony.

²⁴⁶ G-Grandmother Testimony.

²⁴⁷ G-Grandmother Testimony.

²⁴⁸ Hello Fax is an online fax service that transmits documents from a computer to a fax telephone number without using a fax machine. The email title appears as you have received a Hello Fax.

²⁴⁹ G-Grandmother Testimony and PD13-1.

²⁵⁰ G-Grandmother Testimony and PD13-2.

²⁵¹ G-Grandmother Testimony and PD13-3.

²⁵² Principal and Director Testimony.

²⁵³ Asst. Principal Testimony.

²⁵⁴ Principal Testimony.

²⁵⁵ Asst Principal Testimony.

²⁵⁶ PD6-1.

²⁵⁷ PD6-2.

²⁵⁸ PD5-4.

²⁵⁹ PD5-1.

Student be evaluated for Autism or receive an Independent Educational Evaluation.²⁶⁰ Principal did not see any of these documents at the time they were sent.²⁶¹ The Director first saw the letter²⁶² requesting an IEP review meeting at the December 2018 resolution session.²⁶³ Director had no recollection of receiving this letter, and testified credibly that she probably would not have opened an email from Hello Fax because the sender was not identified or she believed the District computer virus software would not allow her to open it.²⁶⁴

6. Guardian requested a meeting with Student's Gen-Ed 2 Teacher²⁶⁵ to take place during the Parent-Teacher Conferences on October 31, 2018.²⁶⁶ When Guardian arrived, Gen-Ed Teacher 2 was present along with Case Manager 2 and Asst Principal.²⁶⁷ Following the homework issue, they were trying to make sure that everyone was working together and moving forward.²⁶⁸ During the conference, they discussed having a formal IEP meeting for Student.²⁶⁹

7. On November 7, 2018, G-Grandmother sent a request to the Asst Principal for Student's records and requested she receive them before November 9, 2018.²⁷⁰ Asst Principal faxed the requested documents to the Guardian,²⁷¹ G-Grandmother, however, testified that she contacted Asst Principal to let her know the Speech/Language evaluation was not received.²⁷²

8. Asst. Principal used the SKYWARD program to access Student's records and only found the PARCC results.²⁷³ Director was unaware that Student's progress reports for the fall of 2017 and Winter of 2018 had not been sent out until the Fall of 2018. This became

²⁶⁰ PD5-7.

²⁶¹ Principal testimony.

²⁶² PD 5-3.

²⁶³ Director Testimony.

²⁶⁴ Director testimony.

²⁶⁵ Personally identifiable information is in Appendix A.

²⁶⁶ Gen Ed Teacher 2.

²⁶⁷ Guardian, Gen-Ed Teacher 2, and Asst. Principal testimony.

²⁶⁸ Asst. Principal testimony.

²⁶⁹ Guardian Testimony and Case Manager 2.

²⁷⁰ G-Grandmother testimony, Asst Principal Testimony and PD8-2.

²⁷¹ Asst. Principal Testimony.

²⁷² G-Grandmother testimony.

²⁷³ Asst. Principal Testimony. PARCC Testing are standardized tests which assess a student's knowledge of the common core state standards.

apparent when the Director was attempting to find Student's progress reports and discovered they were not in Student's file and not on the District's SpedTrack program.²⁷⁴ Director did not speak to Student's case manager from the previous year, Case Manager 1, about the lack of progress reports because the District had severed its relationship with the Case Manager 1 in the fall of 2018.²⁷⁵

9. When the Director became aware of this omission, she verified that Student was the only student effected by a failure to enter information. The Director has since implemented a new series of checks and balances to ensure that information is properly entered and that progress reports go out for each student in a timely manner.

10. Pursuant to the Guardian's request, the District scheduled an IEP meeting for November 12, 2018. On November 10, 2018, a student in Student's class died suddenly. Asst Principal contacted Guardian to cancel Student's November 12, 2018 IEP meeting, advising her that it was necessary for the IEP team to attend to grief counseling for the deceased student's classmates.²⁷⁶ The Guardian was not in agreement with the cancellation of the IEP meeting and, on November 12, 2018, she appeared with G-Grandmother, who was also an educational advocate, for the IEP meeting.²⁷⁷ The District was open to discussing general issues at that time, but the IEP team was not available. The meeting concluded, with hostility on both sides, and with the Guardian advising the Director that a due process case would be filed.²⁷⁸

11. The Guardian did file her due process complaint on November 12, 2018.²⁷⁹

12. At the December 13, 2018 resolution session, the District agreed to provide Student with a neuropsychological evaluation.²⁸⁰ The parties ultimately agreed that the evaluation would be done by a Pediatric Neuropsychologist²⁸¹ at a suburban Chicago hospital.

²⁷⁴ Director Testimony.

²⁷⁵ Director Testimony.

²⁷⁶ Asst. Principal testimony.

²⁷⁷ Personally identifiable information in in Exhibit A.

²⁷⁸ Guardian, G-Grandmother, and Director testimony.

²⁷⁹ IHO Exhibit 1.

²⁸⁰ Director Testimony.

²⁸¹ Personally identifiable information is in Appendix A.

13. During the resolution meeting, it was determined that there was confusion about the number of special ed minutes and the location of the special education services, Student was to be receiving.²⁸² This confusion was created because the copy of the May 2018 IEP the Guardian received at the meeting, included handwritten changes, including the number of minutes per week and of educational setting.²⁸³ In order to clarify the number of minutes and the location for delivery, the District agreed to amend the IEP.²⁸⁴ The IEP's changes and explanation of changes section provides:

Changes were made on the Educational Services and Placement page. Minutes were updated to represent what [Student] is receiving. In the general education classroom, 150 minutes weekly of cross categorical (writing), 150 minutes weekly of reading; Outside the general education classroom – 300 minutes weekly of math, 150 minutes weekly of reading, and 40 minutes weekly of speech and language. This places his percentage of time inside the general education classroom at 75.6%.²⁸⁵

Director determined that Student's IEP was implemented by talking to staff, looking at the IEP paperwork, looking at Student's evaluation, and reviewing [REDACTED] IEP services that were implemented.

F. Neuropsychological Evaluation

1. At the resolution meeting in December of 2018, the District agreed to provide an outside neuropsychological evaluation of Student.²⁸⁶

2. The District contracted with [REDACTED] hospital.²⁸⁷

3. Student was evaluated by Neuropsychologist²⁸⁸ on March 12, and 13, 2019.²⁸⁹ Neuropsychologist administered the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V). Student had the following performances: Full Scale IQ - 75 (Very low); Verbal

²⁸² Director testimony.

²⁸³ Director, G-Grandmother testimony and PD3-25.

²⁸⁴ Director testimony.

²⁸⁵ SD2-1.

²⁸⁶ Director testimony.

²⁸⁷ Director testimony.

²⁸⁸ Personally identifiable information is in Appendix A.

²⁸⁹ SD7-1.

Comprehension - 84 (low average); visual Spatial - 75 (very low); Fluid Reasoning - 69 (extremely low); working Memory - 65 (extremely low); Processing Speed - 102 (average).²⁹⁰

4. Student was assessed using the Woodcock-Johnson Tests of Achievement, Fourth Edition (WJ-IV), Form C. Student's Broad Reading standard score was 89, which ranked at the 23rd percentile (below average), and his sentence reading fluency standard score was 84, which ranked at the 14th percentile (below average). However, his letter -word identification, passage comprehension, word attack and oral reading were in the average range. Student's Broad Mathematics score was in the 2nd percentile (well below average), as were his applied problems and calculations. Student's Math Facts fluency was at the 9th percentile (below average).²⁹¹ Student's math skills were judged to be severe and his deficits were found to be consistent with dyscalculia,²⁹² and it was determined that Student cannot learn math with a spiraling curriculum and needs rote instruction with repetition.²⁹³

5. Student was assessed using the Comprehensive Test of Phonological Processing, Second Edition (CTOPP-2).²⁹⁴ This testing determined that Student had a phonological awareness score of 62, which is at the 1st percentile (well below average), and a phonological memory score of 67, which is the 1st percentile (well below average). However, Student's Rapid Symbolic Naming score was 116, at the 86th percentile (above average).

6. The Neuropsychologist recommended:

- a. An evaluation with audiologist to rule out central auditory processing disorder;
- b. Student be medicated for treatment of mood regulation, in addition to ADHD symptoms;
- c. Speech/language services outside of school in addition to services received in school;²⁹⁵
- d. "Student's IEP categories be changed to Speech and Language impairment and Specific Learning Disability due to the significant language and academic difficulties he has at this time."²⁹⁶

²⁹⁰ SD7-12.

²⁹¹ SD7-14.

²⁹² SD7-(7-8). Dyscalculia is a neurological disorder that affects the ability to understand math concepts and applications and/or to fluently complete basic math calculations. There is usually an underlying weakness for understanding number sense and size relationships. SD7-8.

²⁹³ SD7-9;

²⁹⁴ SD7-14.

²⁹⁵ SD7-8.

²⁹⁶ SD7-9.

5. The neuropsychologist recommended two placements:

a. Co-taught english/language Arts classroom and pull-out resource support for reading.

b. Instructional level math, fully special education, that is targeted to his current basic level of math, Student cannot learn with a spiraling curriculum and should have rote instruction with repetition, and the skills should be focused on the basic math skills needed for daily living.²⁹⁷

6. The Neuropsychologist recommended the following interventions:

a. Explicit work on math skills-for at least an hour a day of direct, intensive, individualized intervention. Student should continue to use TouchMath program.

b. Instruction on how to use techniques to improve his reading comprehension.

c. Speech and language services for a minimum of 90 minutes per week.

d. Social work to help with Student's social skills and ability to regulate his behavior and emotions.

e. An assistive technology consultation is recommended.

G. April 2019 Speech and Language Evaluation Report

1. Guardian had Student evaluated at the [REDACTED], Department of Speech & Hearing Science. The Guardian had concerns about Student's expressive language and ability to understand what he hears and reads.²⁹⁸

2. The Peabody Picture Vocabulary Test, 4th Edition, was administered to assess Student's receptive language. Student's standard score was 85 and fell within the low average range in comparison to same age peers.²⁹⁹

3. The Expressive Vocabulary Test, 2nd Edition, was administered to assess Student's ability to produce an appropriate vocabulary label for objects and concepts. This is an indicator of Student's expressive vocabulary. Student had a Standard Score of 82, which is low compared to his same age peers.³⁰⁰

²⁹⁷ SD7-9.

²⁹⁸ SD8-1.

²⁹⁹ SD8-2.

³⁰⁰ SD8-2.

4. Student was administered the Test of Integrated Language and Literacy Skills (Tills) to assess written and oral language skills. There are 15 subtests to this assessment. Student's scores were compared to the performance of a typically developing same age peer. Standard scores range between 7 and 13. Student scored very low in: vocabulary awareness, phonemic awareness, story retelling, nonword spelling, delayed story retelling, reading fluency, written expression-sentence, and social communication. Student scored low in: digit span forward and digit span backward, and low average in nonword spelling, and written expression. Student was average in nonword repetition, following directions, nonword reading, and written expression-discourse.³⁰¹ Student's written composite score, which measures Student's overall written language skills in spelling, decoding text, reading fluency and writing narrative, was in the zero percentile.³⁰²

5. The evaluation recommended that Student receive speech and language services at the Speech-Language Pathology clinic for 60 minutes once a week.³⁰³

H. Autism Spectrum Disorder Evaluation April 2019.

1. Student was evaluated by the [REDACTED] Autism Clinic. After completing an extensive background history, Student was administered the ADOS2 and was given a score of 1, which translates to minimal to no evidence of autism. The determination was that Student did not meet the criteria for autism.³⁰⁴

I. Proposed Plan for Compensatory Services

1. During the Prehearing Conference, the Guardian agreed to present a written plan for compensatory services. This plan alleges that between 8/29/2017 and 5/24/2018 Student did not receive: 1) 100 minutes of writing per week in the general education classroom for 33.8 weeks of school and requesting 3,380 total minutes; 2) Special education

³⁰¹ SD8-3.

³⁰² SD8-8.

³⁰³ SD8-9.

³⁰⁴ SD9-12.

services for reading of 150 mpw for 33.8 week totaling 5,070 total minutes; 3) special education services for math of 300 mpw totaling 10,140 total minutes.³⁰⁵

2. There was also a request for reimbursement for transportation to a private speech/language therapy, the calculation was for \$17.60 per month, based upon 4 trips per month.³⁰⁶

3. Parent requested that all compensatory services be provided at Brehm Preparatory School.³⁰⁷ No other therapeutic school was considered by the Guardian.³⁰⁸

4. The Guardian made no other recommendation for prospective educational services.

J. The May 2019 IEP

1. At the IEP meeting the recommendation of the Neuropsychologist was reviewed. Student's eligibility was changed to Speech or Language Impairment-Primary and Other Health Impairment.³⁰⁹

2. Student's private Speech/Language evaluation was reviewed. Although Student did not meet the requirements for ESY services, the District agreed to an ESY placement.³¹⁰ Gen-Ed Teacher 2 agreed with the Student strengths identified in the IEP and provided some information toward drafting the strengths.³¹¹ Speech Pathologist found that the private evaluation was consistent with her 2018 report.³¹²

3. Guardian believed that the best placement for Student would be a residential placement at a specific school. The District believed that this would not be Student's least restrictive environment, that his behavior did not warrant placement in a residential school, and that Student should not be removed from the home and placed residentially.³¹³

³⁰⁵ SD-14.

³⁰⁶ SD14-4.

³⁰⁷ Director Testimony and SD14-4.

³⁰⁸ Guardian Testimony.

³⁰⁹ SD1-3.

³¹⁰ Director Testimony.

³¹¹ Gen-Ed Teacher 2 Testimony

³¹² Speech Pathologist testimony.

³¹³ Director Testimony.

4. Students placement was changed to a residential school, specifically Brehm School in ██████████, Illinois, for ESY and school year 2019-2020. A referral packet was sent to ██████████, however, Student was not accepted at this school.³¹⁴ Brehm recommended two out-of-state placements, but those have not been considered by either the District or Guardian.³¹⁵

5. The IEP meeting was not completed as of the date of hearing.³¹⁶

6. During the hearing, the Director offered and Guardian accepted a position for Student in the District's ESY program.³¹⁷

CONCLUSIONS OF LAW AND DISCUSSION OF THE ISSUES

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

Issue One: Whether the District failed to adopt Student's previous April 13, 2017 IEP from the ██████████ School District, or hold an IEP meeting, in accordance with 20 USC §1414(d)(2)(C) and 23 Ill Admin Code §226. 50, when Student first enrolled in the school district in the Fall of 2017, and, if so, was the Student denied a FAPE?

The IDEA is designed "to ensure that all children with disabilities have available to them a free and appropriate public education ("FAPE") that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, an independent living." 20 USC §1400(d)(1)(A). The determination of FAPE and the appropriateness of an existing IEP, or the development of the new IEP, for a disabled child transferring into a local school district is governed by 20 USC

³¹⁴ Director testimony.

³¹⁵ Director and Guardian Testimony.

³¹⁶ Guardian testimony.

³¹⁷ Director and Guardian testimony.

§1414(d)(2)(C), 34 CFR 300.323(e), and the Illinois Administrative Code, 23 Ill Admin. Code § 226.50.

The Federal Code provides “[i]f a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents)³¹⁸ must provide FAPE to the child (including services comparable to those described in the child’s IEP from the previous public agency).” 20 USC §1414(d)(2)(C). Illinois law provides that, when an eligible student transfers into a district from another district within Illinois and “the new district obtains a copy of the student’s IEP before or at the time the child is presented for enrollment, the [new] district may adopt the IEP of the former local school district without an IEP meeting if: i) the parents indicate, either orally or in writing, satisfaction with the current IEP; and ii) the new district determines that the current IEP is appropriate and can be implemented as written.” 23 Ill Admin. Code § 226.50 (a)(1)(A).

Initially, Guardian argues a procedural violation under 23 Ill. Admin. Code §226.50, alleging that the District failed to either: 1) obtain proper consent from the Guardian to adopt the previous IEP, or 2) to schedule an IEP meeting. The District argues that the Guardian did not express any dissatisfaction with the [REDACTED] IEP, either verbally or in writing, and therefore acquiesced to the IEP, resulting in the District’s adoption of the IEP without need for additional inquiry. The District’s argument is without merit and contravenes both the Federal law, which requires the consultation with parents, and Illinois Law, which requires either a verbal or written acknowledgment of satisfaction with

³¹⁸ In consultation with parents was added during the 2004 IDEA amendments.

the prior district IEP. The Districts failure to, at a minimum, discuss the [REDACTED] IEP with the Guardian is a procedural error.

A hearing officer's determination of whether FAPE was received must be based on substantive grounds. Procedural violations alone cannot be deemed a denial of FAPE unless the evidence proves that the violation impeded the student's right to FAPE, the parents right to participate in the decision making process, or caused the student to be deprived of an educational benefit. 20 USC 1415 (f)(3)(E), 34 CFR 300.513 (a).

It is undisputed that at the time of Student's enrollment, the Guardian provided the District a copy of the [REDACTED] IEP.³¹⁹ The District's procedure for a transfer IEP requires the Parent/Guardian to affirmatively express dissatisfaction with the out of district IEP.³²⁰ There was no evidence presented that this policy was ever communicated to the Guardian, and although Case Manager 1 believed she sent a letter to the Guardian explaining what Student's special education services in the District would look like, that letter or email was never offered into evidence, making its existence questionable. Guardian credibly testified she had experience enrolling Student in a new district, that she believed this District would notify her and hold an IEP meeting, and that she attempted to facilitate that meeting by calling the District and even arranging to have the Student's educational records transferred to the District. Therefore, the District's failure to discuss implementation of the [REDACTED] IEP with Guardian, either privately or at an IEP meeting, impeded the Guardian's right to participate in the decision making process and denied Student a FAPE.

³¹⁹ FOF B-1.

³²⁰ FOF B-5.

Issue Two: Whether the District failed to implement the April 13, 2017 IEP, in that: a) the District failed to provide progress reports to Parent, and b) failed to provide Student’s speech language services with fidelity.

The District admits that Case Manager 1 failed to enter Student’s IEP into the District’s Spedtrack system, which resulted in the Guardian not receiving Student’s progress reports for the first and second trimesters of the 2017-2018 school year.³²¹ The District argues that this is a *de minimus* error and did not result in the denial of FAPE to the Student. The District cites the Illinois educational decision in *Chicago Public Schools District No 299*, 110 LRP 70525 (2010) as the basis for its argument. In this case, the Hearing Officer found that the procedural defect of not providing a student with all of the progress reports required by the child’s IEP, was harmless and did not result in a denial of FAPE. This case is distinguishable from the instant case because the Hearing Officer based her decision on the fact that the parents were aware of the progress the student was making and were complimentary of the work being performed by her teacher toward that progress. In this case, the Guardian did not have contact with Case Manager 1 and had only minimal contact with Gen Ed Teacher 1 and was unaware of Student’s progress, or lack thereof.

The District states that Student’s progress monitoring showed significant growth, pointing to the Aimsweb testing from Spring of 2019, which shows 23 points in math and 22 points in reading.³²² This argument ignores the fact that the Aimsweb for the Spring of 2018 (the relevant period to show the IEP’s implementation) shows negative progress in Student’s math and reading.³²³ This prevented both the District and the Guardian from addressing Student’s performance in a timely manner. There was no evidence that Student

³²¹ FOF D-5

³²² FOF E-2a.

made any progress in math or reading for school year 2017-18. The District failed to implement the April 13, 2017 IEP in the area of math and reading. This procedural error deprived the Student of educational benefit and therefore is a denial of FAPE.

As to the provision of speech-language services, the Speech Pathologist testified credibly that she implemented the Student's IEP, provided verbal progress reports to Case Manager 1, and it is undisputed that she provided input at both the domain meeting on March 7, 2018 and the IEP meeting on May 8, 2018. Although Guardian attempted to discredit Speech Pathologist testimony by pointing out an error on Student's Speech/Language Evaluation, that clerical error was insufficient to overcome the credibility of the Speech Pathologist's testimony. I find that Student's Speech/Language services were provided with fidelity and there was no violation of FAPE.

Issue three: Whether the District failed to consider the Student's lack of progress toward annual goals in reading, writing, and math, when it revised Student's May 8, 2018 IEP and, if so, did this deny Student a FAPE.

To determine whether a school district provided a FAPE requires application of a two-part test provided by the Supreme Court in *Hendrick Hudson District Bd. Of Education v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982), as modified by *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). Specifically, it must be determined whether the school district: 1) complied with the procedural requirement(s) of IDEA, and (2) developed an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). "The goals may differ, but every child should have the chance to meet challenging objectives." *Id.*

The IEP meeting was held on May 8, 2018. Although Guardian testified that she did not have a chance to review the Student's Psychology evaluation prior to the meeting,³²⁴ the IEP document makes clear that there was a full presentation made by the School Psychologist during the meeting and the IEP team discussed in detail the evaluations findings.

The goals listed in the IEP specifically reference the Student's progress testing, though, due to lack of testing until week 20, the IEP team's ability to determine lack of progress was to some extent limited.³²⁵ However, the goals as written appear to be consistent with providing Student the opportunity to meet challenging objectives. In fact, the District provided substantial evidence, in the form of testimony and progress monitoring, to show that, during school year 2018-2019, Student made progress in excess of what was originally anticipated. By a preponderance of the evidence, it is found that the District did consider Student's progress in writing the goals for the May 2018 IEP and thus there was no denial of FAPE.

Issue Four: Whether the District failed to provide Student's individualized educational and related services as provided in the April 13, 2017 IEP, specifically, small group or individualized instruction in math, reading and writing, and whether such failure denied Student a FAPE.

FAPE is defined as special education or related services that are provided at public expense, meet the standards of the state, and are provided in conformity with an Individualized Education Program ("IEP"). *Honig v. Doe*, 484 U.S. 305, 310 (1988) and 34 CFR §§300.320-324. An IEP is defined as "a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 34 CFR 300.320 through 34 CFR 300.324." 34 CFR §300.22. Additionally, to address this issue we must

³²⁴ FOF D 10f.

³²⁵ FOF D 10(a)(iii)(aa).

again turn to the two part test provided by *Rowley* and *Endrew* - whether the district 1) complied with the procedural requirements of IDEA, and (2) developed an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Further, the District must ensure that: (1) the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and (2) each teacher and provider... is informed of (i) his or her specific responsibilities related to implementing the child's IEP, and (ii) the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. 34 CFR 300.323 (d)(1).

Earlier in this decision, it was determined that the Speech Pathologist provided Student the services required by the [REDACTED] IEP with fidelity and there was no FAPE violation.

The District argued that the uncontroverted evidence was that the fourth grade educational team provided all of the service minutes specified in the [REDACTED] IEP. This is purely a question of fact, and the answer to this issue rests with the determination of whether the [REDACTED] IEP was properly implemented.

The evidence shows that, upon receipt of the IEP, District staff placed the IEP in Case Manager 1's mailbox. She then provided a copy to the Director's assistant, the School Psychologist, and the Speech Pathologist.³²⁶ It is not disputed that Case Manager 1 was responsible for entering Student's IEP information into the SpedTrack system and failed to do so. This critical failure resulted in Student not receiving progress reports and the inability of the remainder of the educational team to access information regarding the Student.

³²⁶ FOF B-1

Although Case Manager 1 testified she provided the IEP to Gen Ed Teacher 1, Gen Ed Teacher 1's credible testimony was that she only "believed" she had a copy of the IEP, and she was unaware that she was primarily responsible for the implementation of three of Student's goals.³²⁷ There was no testimony that Gen Ed Teacher 1 provided Student's required accommodations, both in the classroom and during testing. On the contrary, Guardian's testimony is that Student complained that he was not being helped, and that he did not receive modified spelling lists or modified social studies lessons. Further, Student told the School Psychologist that he does not get extra help at school.³²⁸

Case Manager 1 testified that Student received all educational and related services listed in the [REDACTED] IEP. However, Case Manager 1 cannot make this assertion, since, after October 2017, she did not provide services to Student and was the teacher of record.³²⁹ There was no testimony from the Substitute, who was allegedly providing the special education services to Student, and we have no evidence as to how or whether Student's services were implemented. What is known is that Student received no grades in English Language Arts on his report card for either the first or second trimester, and several grades are missing in mathematics, leading to the conclusion that these services were not provided. Anecdotal evidence from the Psychologist evaluation indicates that she observed Student receiving these services. However, all of the observations take place after the data entry error was discovered and the domain meeting took place. I find, therefore, that the District failed to provide Student's individualized education and related services in Writing, Reading and Math, from date of enrollment to May 8, 2018, and such failure denied Student a FAPE.

³²⁷ FOF B2b(i-ii).

³²⁸ FOF D-10,e, ii.

³²⁹ FOF B-6.

Issue Five: Whether the District failed to provide educational services as provided in the May 8, 2018 IEP, specifically did the District implement Student's 300 mpw math instruction.

The Guardian has argued that the District failed to properly identify that Student was entitled to 300 mpw of math instruction, due to handwritten notes on the Parent's copy of the May 8, 2018 IEP, a procedural error and potentially a substantive error if the minutes were not provided to Student.

The District presented the credible testimony of Case Manager 2, who testified that she reviewed Student's IEP, noticed that the math minutes were not clearly identified, researched and determined the correct minutes and then implemented them.³³⁰ She provided clear notes on Student's progress and Student's success was evidenced using standardized testing.³³¹ The procedural error was corrected at the resolution meeting in December of 2018.³³² This procedural violation did not deprive Student of an educational benefit or impede Student's right to FAPE because the correct number of minutes were implemented by Case Manager 2. Also, the Guardian, having the full opportunity to participate in the May 8, 2018 IEP process, agreed upon the minutes.

Issue Six: Whether the District failed to provide FAPE to Student from August 29, 2017 to December 13, 2018.

I have previously determined that the District did deny Student a FAPE from August 29, 2017 to May 8, 2018 by failing to implement Student's goals in writing, math and reading. The discussion on this issue begins on May 9, 2018.

³³⁰ FOF E-2.

³³¹ FOF E-2(a-b)

³³² FOF E-13.

The uncontradicted testimony of the District's witnesses was that they implemented Student's May 2018 IEP and all of Student's services with fidelity. The Guardian is correct, there were mis-steps which caused the Guardian to question the way the Student's services were being implemented. However, even during the miscommunications between the Guardian (and G-Grandmother/advisor) and the District in the fall of 2018, the evidence clearly shows that the fifth grade educational team worked cooperatively to ensure that Student received all of his IEP services. There was no FAPE violation during this period.

Issue Seven: Whether the District failed to respond appropriately to a written request dated October 8, 2018 for an autism evaluation by the Guardian's advocate.

During the hearing, the Guardian established that the actual date of the request was October 22, 2018 and that the request was for an autism evaluation.³³³

An independent educational evaluation (IEE) is a procedural safeguard that provides the parents with the opportunity to obtain their own private evaluation of their child. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. 34 CFR §300.502 (b)(1). If a parent requests an IEE at public expense, the district must, without unnecessary delay, request a due process hearing to show that its evaluation of a child was appropriate, or provide the IEE at public expense. 34 CFR §300.502 (b)(2). The phrase "without unreasonable delay" is not defined in the

³³³ FOF E-5.

regulations. Therefore, what constitutes unreasonable delay is dependent on the facts of each case.

The District witnesses have denied receiving the request because it was sent with an unfamiliar outside fax provider, Hello Fax³³⁴. There was no testimony presented that the Guardian or the G-Grandmother ever followed up on this request. However, at the resolution meeting on December 13, 2018, the District did agree to fund the Guardians request for an IEE. Following this agreement, when the parties could not agree on a provider, the District filed a due process complaint on December 28, 2018. Based on the evidence presented, I find that there was not unreasonable delay in responding to the Guardian's request for an IEE.

Conclusion:

When the procedural violations are consider in totality, this Hearing Officer has found that Student was denied a FAPE when the District: 1) Denied the Guardian the right to participate in the process to adopt Student's [REDACTED] IEP (Issue 1); Denied Student educational benefit by failing to provide him with progress reports which could have evidenced Student's lack of progress and allowed a timely intervention (Issue 3); and ultimately denied Student FAPE when the District failed to implement Student's IEP services in the areas of Math, Reading and Writing (Issue 4). The failure to implement Student's IEP for the period between enrollment and May 8, 2018, a period of eight months was significant.

³³⁴ FOF E-4

For a finding that the District has violated Student’s right to a FAPE, the Guardian has requested compensatory educational services. In support of those services a formal written request for compensatory education was filed.

A. Applicable Law

Compensatory education is an equitable remedy hearing officers can award to compensate parents for a district’s failure to provide their disabled child with a free and appropriate public education. In determining compensatory awards, “[t]he question is how much compensatory education – if any – is necessary to restore [the student] to the position she would have occupied, had the school district provided her with a FAPE during the periods in which she was deprived of one.” *Petrina W. v. City of Chicago Public School*, 53 IDELR 259 p. 5 (N.D. Ill. 2009). (*citing Reid v. Dist. Of Columbia*, 401 F.3d 516 (D.C. Cir. 2005)). A compensatory education award should be based on the equitable factors present in the case and should serve to compensate for past losses of educational benefit. *Reid v. Dist. Of Columbia*, 401 F.3d 516 (D.C. Cir. 2005). However, while there is no obligation, and it might not be appropriate, to craft an hour for hour remedy, an "award constructed with the aid of a formula is not per se invalid." *Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt*, 532 F. Supp. 2d 121, 124 (D.D.C. 2008). Again, the inquiry is whether the "formula-based award ... represents an individually tailored approach to meet the student's unique needs, as opposed to a backwards-looking calculation of educational units denied to a student." *Mary McLeod Bethune Day Academy v. Bland*, 524 F. Supp 2d 109 (D.D.C. 2008).

In the Federal Courts, there are primarily two competing approaches used to calculate a compensatory education award. The first approach is the “quantitative approach” preferred by the Third Circuit, *M.C. v. Cent. Reg’l Sch. Dist.*, 81 F.3d 389, 23

IDELR 118 (3rd Cir. 1996) and the second is the “qualitative approach” developed by the D.C. Circuit Court of Appeals. *Reid v. District of Columbia*, 401 F. 3d 516, 43 IDELR 32 (D.C. Cir 2005). The quantitative approach, used by the Third Circuit, provides a child is entitled to compensatory education “for a period equal to the period of deprivation but excluding the time reasonably required for the school district to rectify the problem.” *Mary T. v. School District of Philadelphia*, 575 F.3d 235, 248 (3rd Cir. 2009). Reid rejects the Third Circuit’s quantitative “cookie-cutter approach,” i.e., an hour of compensatory instruction for each hour that FAPE was denied. *Reid*, 401 F.3d at 523.

The *Reid* Court determined that an award of compensatory education should be fashioned on individualized assessments and not a mechanical hour counting. The Court explained that some children may only require short programs which focus on a specific problem or deficiency while other children may need more extensive programs which exceed the hour for hour calculation. Under *Reid*, the determination is based on the facts of each individual case and the award should be reasonably calculated to provide the educational benefits that likely would have accrued if the school district had initially provided the child with the necessary special educational services. The Hearing Officer must make a fact-intensive analysis that is qualitative. *Branham v. D. C.*, 427 F. 3d 7, 11 (D. C. Cir. 2005) Under the qualitative approach, the Hearing Officer is also required to consider the school district’s conduct and the parent’s conduct in calculating the reward. *Reid*, 401 F.3d at 523. The Hearing Officer must also determine the period the child was denied FAPE and what the denials of FAPE were. *Petrina W. v. City of Chicago Public School District 299*, 53 IDELR 299 (N. D. IL, 2009)

The Northern District of Illinois, has rejected the Third Circuit approach and indicated a “flexible, individualized approach is more consonant with the aim of IDEA, as

articulated in its statutory language and Supreme Court jurisprudence. *Petrina W. v. City of Chicago Public School District 299*, 53 IDELR 299 (N. D. IL, 2009). The *Petrina* Court found the proper question is how much compensatory education is necessary to restore the child to the position the child would have been in if the school district had provided the child with a FAPE during the time period in which the child was deprived of a FAPE. The Central District of Illinois has agreed with the reasoning of the Northern District and found the qualitative approach is more in line with the principles of IDEA. *T. G. ex rel T. G. v. Midland School Dist. 7*, 848 F. Supp. 2d 902 (C.D. IL. 2012). However, the Court in *T.G.* indicated it would defer to the hearing officer as long as the determination was reasonable and could be supported by the evidence. The Seventh Circuit has yet to rule on which approach it believes is preferable.

Since the Central District of Illinois has followed the qualitative approach of *Reid* and its progeny the qualitative approach will be used to determine the compensatory award for this Student.

The parent has the burden of proposing a well articulated plan that reflects the student's current education abilities and needs and is supported by the record. *Phillips v. District of Columbia*, citing *Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt*, 583 F. Supp. 2d 169, 172 (D.D.C. 2008) The Guardian filed a written compensatory education request,³³⁵ this request was based on a mathematical calculation of lost minutes and will form the foundation for the analysis of the compensatory education award.

B. Denial of FAPE

³³⁵ FOF

The finding is that Student was denied a FAPE from September 1, 2017 to May 8, 2018 in the areas of writing, reading, and math, based upon the failure of the District to properly implement the [REDACTED] IEP.

C. Writing

There is a connection between spoken and written language, and although there was no finding of denial of FAPE in the area of speech/language based upon the testimony of the Speech Pathologist, there was no testimony that she provided any direct services in the area of written expression and the implementation of that goal was the responsibility of the general education teacher. In writing, Student was to have received 100 mpw within the general education classroom,³³⁶ however, Student's PLOP specified Student was receiving 1:1 support in writing.³³⁷ Looking at the present level of performance from the 2017 IEP, Student was using the who, did what, where and when format and visual cues.³³⁸ Student did not receive any 1:1 writing instruction in the general education classroom from September 2017 -May 8, 2018. There was no finding of denial of FAPE after May 8, 2018. In April 2019, Student was administered the Tills and received an overall written language skill in writing narrative that was in the zero percentile.³³⁹ Between 2017 and 2019, Student has not shown any progress in written expression. Further, the ability to communicate in a written paragraph has implications beyond mere written expression. There are ancillary effects on virtually all education areas, English, math, science, and social studies, this is especially true as Student moves into the junior high grades where the ability to communicate in written language will intensify. Student has lost 31.8 weeks

³³⁶ FOF C-5.

³³⁷ FOF C-2b.

³³⁸ FOF C-2b.

³³⁹ FOF G-4.

(between 9-1-17 and 5-8-15) at 100 mpw totaling 3,180 lost minutes of service. In accordance with the recommendations of the Neuropsychologist³⁴⁰ and of the University of Illinois,³⁴¹ Student shall receive 60 minutes per week of speech/language services focusing on the area of written expression, for 53 sessions, to be delivered at the University of Illinois Speech-Language Pathology Clinic. These services will be contracted by and paid for by the District. District shall have until July 15, 2019 to arrange these services. Services must be completed by September 1, 2020. Any services not completed by that date will not be provided.

Guardian provides the transportation to allow Student to attend these sessions. The District is ordered to reimburse Guardian the sum of \$4.40 for roundtrip transportation costs for each day in which Student attends a session, payable monthly, 10 calendar days after receipt of proof of the number of days Student attended that month.³⁴² The Guardian has also requested reimbursement for transportation in the amount of \$17.60 per month for speech/language services provided to the Student beginning in January of 2019. There was no evidence presented regarding what services were provided during the Student's therapy sessions and so there is no order for reimbursement.

D. Reading

The Graylake IEP provided Student was to receive 150 mpw of reading instruction in the special education classroom.³⁴³ This is not listed as 1:1 instruction. There were 17 students assigned to the special education classroom.³⁴⁴ There was no evidence as to the

³⁴⁰ FOF F-6c.

³⁴¹ FOF G-5.

³⁴² FOF G-2.

³⁴³ FOF C-5.

³⁴⁴ FOF B-6.

number of students present during the reading session,³⁴⁵ based on the small math groups, this number is determined to be 5 students. The session lasted for 45 minutes and was divided between reading and independent spelling.³⁴⁶

In 2017, Student's present level of performance indicate Student was reading at Fountas and Pinnell, level M (third grade level), Student was able to decode the text and read fluently but struggles to answer comprehension questions when not presented with a multiple format. Aims fluency assessment given in January 2017 indicate Student read 121 words per minute with 3 errors and is at the 60% placement compared to peers.³⁴⁷ Student's present level of performance from his May 3, 2019 IEP indicates Student's Jan Richardson level is a N (Mid 3rd grade) in January 2019. Student was stopped at N due to his comprehension. He was fluent and accurate at that level. When working independently with 3rd grade leveled text he is scoring an average of 58% accurate on comprehension questions.

However, Student's MAP scores between Fall of 2017 and Spring of 2019 show a total RIT growth of 25 points (Two points for year 2018 and 23 points for year 2019),³⁴⁸ which actually exceeds the Student's projected growth across the span of the two years (projected to be 24). The equitable factors presented through testimony and progress testing indicate that during the year 2018-2019, the District and Student's educational team took every effort to mitigate the lack of progress shown in Student's 2017-18 school testing, however, they cannot be given full credit for this growth, because during the 2019 testing, Student would have received all accommodations required by the IEP, and those

³⁴⁵ FOF D-e iii (aa)

³⁴⁶ FOF D-e iii (aa)

³⁴⁷ FOF C-2a.

³⁴⁸ FOF E-2b.

accommodations were likely not present in 2018 due to the failure to implement Student's IEP. This is all considered in determining the compensatory education award.

The Guardian has sought 5,070 minutes of compensatory reading instruction. Student was to have received 30 minutes per day in small group (5) instruction, meaning that it is likely on average Student should have received no more than 10 minutes of individual instruction per day, or 50 mpw. The denial of FAPE took place for 31.8 weeks, which means Student was denied 1590 minutes of individual instruction. To compensate for the denial of FAPE in the 2017-18 school year, the District shall provide to Student, in addition to the 60 minutes in special education and 150 minutes in general education already specified in Student's May 2019 IEP, 45 mpw (divided into no more than 2 sessions per week) of one to one reading instruction, focusing on reading comprehension, for the entirety of the 2019-2020 school year.

E. Math.

All evaluation and testimony agrees that Math one of Student's weaknesses. The Graylake IEP provided Student was to receive 300 mpw of math instruction in the special education classroom,³⁴⁹ which included a direct instruction math program,"³⁵⁰ Case Manager 2 described this type of program as her teaching practice.³⁵¹

The math PLOP provided that on the "NWEA given in the winter of 2017, [Student] scored 176 (5%). [Student] also needed a significant amount of prompting to read all passages and questions thoroughly before selecting an answer on this test." Student works

³⁴⁹ FOF C-2c

³⁵⁰ For clarity, It is noted that direct instruction is not one to one instruction and refers to instruction where teachers clearly state a teaching objective and follow a defined instructional sequence, assessing how much student's already know and then altering subsequent instruction based on that knowledge.

³⁵¹ FOF E-2.

in small group for math where concepts are taught at a slower pace with multiple days of exposure to concepts. Even with this format [Student] struggles to understand the grade level math concepts of multiplication, division, fractions and word problems.

Student's MAP scores between Fall of 2017 and Spring of 2019 show a total RIT growth of 18 points (negative 4 points for year 2018 and 22 points for year 2019),³⁵² again this growth is discounted because Student was given IEP accommodations which were not received in 2018. Student's math concepts and applications were initially progress monitored at the second grade level, and Student's progress allowed him to be moved up to the third grade level at week 17.³⁵³

The Neuropsychology Report determined Student's Broad Mathematics score was in the 2nd percentile (well below average), as were his applied problems and calculations. Student's math deficits were found to be severe.³⁵⁴ Student's math deficits are likely aggravated by his diagnosis of dyscalculia, which requires a specialized math program.³⁵⁵ The Neuropsychologist acknowledges that the Student's current math program, TouchMath, is appropriate. The Neuropsychologist recommends that Student receive direct, intensive, individualized intervention in math for at least an hour a day.

The Guardian has sought 10,140 minutes of compensatory math instruction. Student's special education math class consisted of 10 students, and an aide, they met for 60 minutes per day, 5 days per week, they were broken into 2 groups of 5.³⁵⁶ The calculation shows that Student would have on average received 12.5 minutes per day of individualized instruction. Student was denied FAPE for 31.8 weeks, and loss 1,987.50

³⁵² FOF E-2b.

³⁵³ FOF E-2a.

³⁵⁴ FOF E-4.

³⁵⁵ FOF D-4.

³⁵⁶ FOF D-e iii (bb)

direct instruction hours. To compensate for the denial of FAPE in the 2017-2018 school year, the District shall provide all Student's math instruction minutes (300 minutes per week) in the special education classroom, using the TouchMath program or similar program that does not include spiraling. In addition, Student shall receive 60 mpw (undivided) of one to one rote math instruction, focusing on the basic math skills needed for daily living, for the entirety of the 2019-2020 school year.

It is hereby Ordered:

1. Student shall receive 60 minutes per week of speech/language services focusing on the area of written expression, for 53 sessions, to be delivered at the University of Illinois Speech-Language Pathology Clinic. These services will be contracted by and paid for by the District. District shall have until July 15, 2019 to arrange these services. Services must be completed by September 1, 2020, any services not completed by that date will not be provided.

2. The District is ordered to reimburse Guardian for Student's transportation, to the Speech-Language Pathology clinic, the sum of \$4.40 per day for each day Student participates in a speech/language session, payable monthly (10 calendar days after receipt of proof of the number of days Student attended that month). Guardian's failure to submit evidence to support the reimbursement by the 30th day of the month following services shall act as a waiver of reimbursement for that period.

3. The District shall provide to Student, in addition to the minutes already allocated in Student's IEP, 45 mpw (divided into no more than 2 sessions per week) of one to one reading instruction, focusing on reading comprehension, for the entirety of the 2019-2020 school year. These compensatory minutes shall be added to Student's IEP for the 2019-2020 school year, prior to the first day of school.

4. The District shall provide to Student the 300 minutes per week of math instruction, in the special education classroom, using the TouchMath program or similar program that does not include spiraling, this modification shall be made to Student's IEP for the 2019-2020 school year, prior to the first day of school.

5. Student shall receive 60 minutes per week (undivided) of one to one rote math instruction, focusing on the basic math skills needed for daily living, for the entirety of the 2019-2020 school year, this modification shall be made to Student's IEP for the 2019-2020 school year, prior to the first day of school.

Dated: June 19, 2019

/S/Mary Jo Strusz
Mary Jo Strusz, Impartial Hearing Officer
[REDACTED]
[REDACTED], IL [REDACTED]
[REDACTED]

Within 45 calendar days of receipt of this Order, the [REDACTED] C.U.S.D. # [REDACTED] shall submit proof of compliance to:

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

NOTICE OF RIGHT TO REQUEST CLARIFICATION

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

request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

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

Dated: June 19, 2019

/S/Mary Jo Strusz
Mary Jo Strusz, Impartial Hearing Officer

[REDACTED]

APPENDIX A

█ v. █ CUSD # █
Case No: 2019- DP-0141

Identification	NAME	ACRONYM
CHILD	█	Student
Legal Guardian	█	Guardian
Great-Grandmother/Advocate	█	G-Grandmother
Attending School	█	LTES
Pediatric Neuropsychologist	█ Hospital	Neuropsychologist
Director of Special Education	█	Director
Principal of LTES	█	Principal
Assistant Principal of LTES	█	Asst Principal
Special Ed Teacher/Case Manager	█	Case Manager 1
Special Ed Teacher/Case Manager	█	Case Manager 2
General Education Teacher (Fourth Grade)	█	Gen-Ed Teacher 1
General Education Teacher (Fifth Grade)	█	Gen-Ed Teacher 2
Special Education Substitute Teacher (Fourth Grade)	█	Substitute
School Psychologist	█	School Psychologist
Speech Pathologist	█	Speech Pathologist
Social Worker	█	Social Worker
Special Education Teacher	█	Sped Ed Teacher 1

CERTIFICATE OF SERVICE BY EMAIL AND
CERTIFIED UNITED STATES POST OFFICE MAIL

I the undersigned, Mary Jo Strusz, certify that on June 19, 2019, a copy of the FINAL DETERMINATION AND ORDER, was served upon the following persons via email transmission by attached document in pdf format to the email addresses below and a copy of the printed documents with original signatures were placed in the United States Postal Service, Certified Mail and address to the parties at the addresses below:



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

June 19, 2019

/S/ Mary Jo Strusz
Mary Jo Strusz, Impartial Hearing Officer

