

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

STUDENT¹,

Student,

Case No: 2019-DP-0146

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

██████████ SD ██████,

School District.

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.*

BACKGROUND

The Student is a 14-year-old, male who is an 8th grade student at a charter school affiliated with the District. He qualifies for special education services under the disability categories of Specific Learning Disability (SLD) and Speech Language Impairment (SLI) pursuant to an eligibility and IEP meeting held on September 23, 2016. The Student has deficits in the areas of expressive, receptive, and oral language; written expression; reading comprehension and fluency; math reasoning and fluency. He has been previously diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), predominantly inattentive presentation.

¹ Personal identification information is provided in Appendix A.

The Student was placed at a private therapeutic day school (TDS), pursuant to a Settlement Agreement reached between Parent and the District, as a result of mediation in Summer 2015. (SD #16, 23.) The private TDS in which the Student was enrolled in Summer 2015, released him on October 4, 2017. (PE #41.) Pursuant to the terms of the Settlement Agreement, the District was to refer the Student to a similarly situated separate day school in the event that TDS was unable to accept the Student or continue with placement. (SD #23.) The Student remained unenrolled in a District school until the Spring of 2019.

This matter was commenced by Parent's request for an Independent Education Evaluation (IEE). The District filed its Due Process Complaint Notice on November 26, 2018 in response thereto. (IHO #1.) Parent subsequently filed a Due Process Complaint Notice in this matter on December 6, 2018. (IHO #3.) These matters were consolidated pursuant to this Hearing Officer's Order of Consolidation dated January 2, 2019. (IHO #5.) Parent subsequently filed an Amended request on February 7, 2019 and a Motion Seeking Leave to File a Second Amended request on April 5, 2019. (IHO # 8, 23.) The parties participated in resolution sessions on March 12 and April 9, 2019. However they failed to reach an agreement on any of the outstanding issues.

It was determined that Parent's Second Amended DPCN did not raise any new or additional issues. It simply provided some additional specification regarding the issues previously raised by Parent. Therefore, Parent's Motion to file a Second Amended DPCN was denied. (IHO # 25.) The parties jointly requested continuances of this matter on the following dates: March 22, May 3, and August 27, 2019. Continuances were granted for good cause shown on March 27 & May 8, 2019. (IHO #22, 27.) The joint request for Continuance dated August 27, 2019 was denied by this Hearing Officer for lack of good cause shown. (IHO #38.)

On March 22, 2019, a Prehearing Conference (PHC) was commenced but not completed in this matter. The continuation of the Prehearing Conference was held on August 20, 2019. Participating in the March 2019 conference were: Parent's counsel, Maureen Graves and District's counsel, Koga Ndikum-Moffor. Participating in the August 20th conference were: Parent's counsel, Maureen Graves and District counsel, Cecelia Blue. The PHC was not completed on August 20th and was continued to August 27th for completion. On that date the parties and this IHO discussed the parties' request to continue the hearing in this matter. The parties also considered withdrawal of their respective DPCNs. As the matter was not resolved, the PHC was continued to August 28th and was completed on that date. (IHO #35.)

The Due Process Hearing dates were set by agreement for September 10-13, 2019. The decision due date is set for September 27, 2019. (IHO # 27.)

The Parent opted for an open hearing. The Due Process Hearing was held on September 10-13, 2019. Ms. Maureen Graves of the Law Offices of Maureen Graves represented the Parent. Ms. Cecelia Blue & Ms. Elizabeth Wagman represented the District. The parties presented their individual witnesses and several joint witnesses.² The Parent presented the following Exhibits (PE): #1; 7 (p. 196); 22 (p. 372, 385-387); 25; 29; 30; 37-39; 41; 43 (p. 479, 482, 485, 503-505); 47; 48; 51; 56; 67; 81; 95-98; 109-110; 111 (p. 1571, 1580, 1590-1591); 112 (p. 1676) which were admitted into evidence. The District presented the following Exhibits (SD): #1, 3, 5-23 which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-54. Both parties submitted oral closing statements, a written outline thereof, and any case law relied upon.

² Witnesses presented by both parties are identified in Appendix A.

ISSUES

The issues raised by the Parent's counsel, including the relief requested, and the response of the District, present the following issues, defenses and requested relief for determination by this Hearing Officer:

(a) Whether the District's Psychological Evaluation dated September 28, 2017 was "inappropriate" pursuant to IDEA 34 C.F.R. 300.304 and 34 C.F.R. 300.305? More specifically:

- 1) Did the Psychological Evaluation use a variety of assessment tools and strategies, specifically the Woodcock-Johnson, to gather relevant functional, developmental, and academic information about the Student, including information provided by the parent to determine the content of the Student's IEP, specifically regarding the Student's reading and math abilities, pursuant to 34 C.F.R. 300.304(b)(1)(ii), 34 C.F.R. 300.304(c)(7), and 34 C.F.R. 300.305(a)(1)(i)?
- 2) Was the Woodcock-Johnson IV selected and administered so as not to be discriminatory on a racial or cultural basis pursuant to 34 C.F.R. 300.304(c)(1)(i)?
- 3) Were the Woodcock-Johnson IV, Listening Comprehension Test Adolescent, EVT-2 and PPVT-4 administered by trained and knowledgeable personnel pursuant to 34 C.F.R. 300.304(c)(1)(iv)?
- 4) Were the Woodcock-Johnson IV, Listening Comprehension Test Adolescent, EVT-2 and PPVT-4 administered in accordance with any instructions provided by the producer of the assessments pursuant to 34 C.F.R. 300.304(c)(1)(v)?
- 5) Was the Student assessed by the psychologist in all areas of suspected disability, specifically, academic performance as it relates to math, reading fluency and comprehension, writing, expressive and receptive language, and ADHD pursuant to 34 C.F.R. 300.304(c)(4)?
- 6) Whether the documentation of the determination of eligibility, for a Student having a specific learning disability, contained a statement of the determination of the group concerning the effects of cultural factors on the child's achievement level pursuant to 34 C.F.R. 300.311?
- 7) Did the psychologist and other qualified professional review existing evaluation data on the child, including classroom-based observations pursuant to 34 C.F.R. 300.305(a)(1)(ii)?

The Parent requests that this Hearing Officer issue an Order finding that the Psychological Evaluation was inappropriate as alleged above. The Parent further requests that this Hearing Officer Order reimbursement for Parent's privately obtained psychological evaluation. The District maintains that the Psychological Evaluation in question was appropriate in all areas pursuant to the requirements of IDEA.

Timeframe for the below issues: December 6, 2016 through December 20, 2018.

The Student has deficits in the following areas: language impairments, specifically in the areas of receptive, expressive, and oral language; math weaknesses in decoding; major deficits in reading comprehension.

(b) Was the Student provided with FAPE while at [REDACTED] School from December 2016 through October 2017 pursuant to the IEPs dated September 23, 2016 & February 20, 2017, and thereafter from his release date from [REDACTED] School, approximately October 7, 2017, through December 20, 2018, specifically as follows:

(1) Whether the Student was denied FAPE when receptive, expressive, and oral language goals in both IEPs were deficient and not designed to address his specific language deficits and to allow him to make educational progress in light of his unique circumstances. Further whether these same IEP goals were measurable as terms used in the benchmarks were undefined in the IEPs themselves.

(2) Whether the Student was denied FAPE in the area of reading when the present levels of performance were unclear and contradictory and the when the reading goal did not call for any improvement in the Student's instructional reading level. Parent alleges specifically that it was unclear what the Student's instructional reading level was and goals were not designed to enable Student to progress with respect to instructional and independent reading levels.

(3) Whether the District identified the Student's present levels of performance with respect to decoding, fluency, and reading comprehension. Parent maintains that PLOPs in these areas were unclear and contradictory. Whether the District used research based interventions, designed to meet the Student's unique decoding, fluency, reading comprehension needs and to allow him to make educational progress in those areas in light of his unique educational circumstances.

Parent's Requested Remedy for (b) (1) through (3) above:

(a) Lindamood-Bell instruction for decoding and reading comprehension. At hearing, expert witness to testify as to how many hours of compensatory education Student needs and how to be delivered. Parent's counsel to provide proposed Compensatory Education package by the 5-Day Disclosure date.

(b) Tutoring for written language – how many hours and method of proposed delivery to be provided by expert witness and contained within Parent's proposed Compensatory Education package.

(c) Oral language development program for expressive and receptive language – direct instruction for oral language development in individual or group setting - expert to testify as to how many hours, what programming looks like, method for delivery of same. [REDACTED], [REDACTED] – experts to testify regarding this.

(d) Compensatory speech language therapy – combination of individual and group. Expert to testify as to how many hours.

The District maintains that the IEPs created at [REDACTED] were appropriate and designed to enable the Student to make educational progress in light of his unique needs. The District further maintains that the Student was provided with appropriate goals, benchmark, accommodations and modifications. It is the District position's that, at all times in question, the Student was provided a FAPE and that Parent's request for compensatory education should be denied.

(4) Whether the Student was denied FAPE in the academic area of mathematics as follows:

(a) Whether the Student was denied FAPE in the academic area of mathematics when the PLOPs were unclear and inconsistent with respect to the Student's math skills.

(b) Whether the PLOPs contained information regarding Student's vocabulary and language in the area of mathematics.

(c) Whether the IEPs contained goals designed to enable the Student to progress with respect to math vocabulary and language.

(d) Whether the IEPs contained goals designed to remediate the Student's deficits in the area of math fluency – specifically related to speed and automaticity with respect to math computation.

(e) Whether the IEPs provided accommodations and modifications, specifically calculator usage and visual cues and guides, designed to enable the Student to increase his independent mathematical computation fluency.

(f) Whether the math goals were specifically designed to enable the Student to make educational progress in the areas of math calculation and problem solving given the Student's present levels of performance.

(g) Whether the IEPs provided for researched based interventions to address the Student's deficit areas in math specifically the areas of math language and vocabulary, math computation and problem solving.

Parent's Requested Remedy for (4) (a) through (g) above:

(a) Tutoring in the academic area of mathematics. Specific request to be submitted by Parent in Parent's proposed compensatory education request package submitted by the 5-Day Disclosure date. Expert to testify to same Dr. [REDACTED] or Dr. [REDACTED].

The District maintains that the IEPs created at [REDACTED] were appropriate and designed to enable the Student to make educational progress. Further, the Student was provided with

appropriate goals, benchmarks, accommodations, and modifications in the academic area of mathematics. The District requests that this Hearing Officer find that, at all times in question, the District provided the Student with a FAPE in the area of mathematics. Parent's request for compensatory education in the form of mathematics tutoring should be denied.

(5) Whether the Student's September 2016 and February 2017 IEPs identified his need for social studies instruction and provided appropriate social studies instruction thus denying him FAPE when social studies goals were not provided, instruction was not grade level, and the curriculum was not appropriate given Student's unique educational needs and disability. Due to his disability, the Student had limited ability to obtain information due to listening and reading comprehension deficits.

Remedy: Parent requests tutoring in the area of social studies which would include social studies enrichment activities – per compensatory education package to be delivered at the 5-Day disclosure date.

The District maintains that, at all times in question, the Student's social studies instruction was appropriate given his unique educational needs.

(6) Natural Science - both IEPs – listening and reading comprehension has limited his ability to obtain information. IEP indicated general education natural science. Whether the IEPs identified the Student's need for natural science instruction and whether the IEPs denied the Student FAPE when appropriate natural science instruction was not provided – i.e. No goals provided, instruction was not grade level, curriculum was not appropriate given Student's unique educational needs and disability.

Remedy: Parent requests tutoring in the area of natural science which would include natural science enrichment activities – per compensatory education package to be delivered at the 5-Day disclosure date.

The District maintains that at all times in questions, the Student's natural science instruction was appropriate given his unique educational needs.

The District maintains that in all areas, at all times in question, it provided the Student with a FAPE. The District affirmatively states that Parent refused the offered services. Alternatively, the District maintains that if compensatory education is awarded, equity requires this IHO to consider the unreasonable conduct of Parent and reduce said award. The District maintains that Parent's conduct was unreasonable when she repeatedly refused services offered by the District to provide a FAPE.

(7) Whether the Student was denied FAPE when the social work services provided in the September 2016 and February 2017 IEPs were inadequate to address the Student's pragmatic language and social anxiety needs?

Parent maintains that the social work services provided were inadequate to meet the Student's needs.

Remedy: Parent requests that compensatory education via counseling services by a psychologist or social worker be provided to address the Student's pragmatic language and social anxiety needs. Parent further requests that a compensatory education award provide the Student the opportunity to participate in social skills training including social skills groups facilitated by a professional to be delivered outside of school setting. Expert to testify to same.

The District maintains that, at all times in question, appropriate social work services were provided. The District further maintains that any compensatory education award should be denied or, in alternative, reduced due to Parent's lack of cooperation and unreasonable behavior i.e. refusing services.

(8) Whether the Student was denied FAPE when the District failed to convene any IEP meetings for the Student from February 2017 to December 2018.

Parent maintains that IEP meetings have not been held for the Student from February 2017 to December 2018³ thus denying the Student FAPE and denying the Parent the opportunity to meaningfully participate in the development of the Students IEPs and educational programming.

(9) Whether the Student was denied FAPE when Parent's request regarding staff qualifications for █████ School staff were not responded to and when incomplete progress reports were provided. Parent alleges that progress reports received did not provide information regarding the Student's grades, progress toward IEP goals and benchmarks. This resulted in a procedural violation of FAPE and denied Parent the ability to meaningfully participate in IEP meetings and educational programming for the Student.

The District maintains that the Student was not made available to the District for evaluation and IEP meetings after his release from █████ School on October 7, 2017. District's efforts to obtain access to Student after October 7, 2017 were refused by Parent. Parent refused to accept placement offers made by the District on or after October 7, 2017. The District maintains that, at all times in question, it provided information regarding █████ School staff qualifications and progress reports with complete information to the Parent.

Remedy: Parent requests no additional remedy other than the requested compensatory education package to be delivered by the 5-Day disclosure date.

(10) Whether the District provided FAPE to the Student in the LRE when placement in the September 2016 and February 2017 IEPs was determined to be a private therapeutic day school.

Parent maintains that Student's IEP team should have discussed a less restrictive environment and that the IEP team should have included a general education teacher. These procedural violations impaired Student's right to a FAPE.

³ Parties are limiting to December 2018 when Parent learned that District proposed a placement for Student at █████ Academy via letter to Parent.

The District maintains at all times in question that District provided FAPE in the LRE and that a general education teacher was part of IEP team.

(11) Whether the District provided the Student with an appropriate site for implementation of his September 2016/February 2017 IEP and placement after his release from [REDACTED] School in October 2017.

Remedy: Parent requests compensatory education per the package to be delivered by the 5-Day disclosure date.

The District will provide its response to Parent's requested compensatory education package by September 5, 2019 at 9:00 a.m.

The parties agree that the qualitative method of compensatory education is to be applied in this matter per Seventh Circuit precedent.

FINDINGS OF FACT

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

Psychological Evaluation

1. The Student is a 14-year-old, male who is an 8th grade student at a charter school affiliated with the District. He qualifies for special education services under the disability categories of Specific Learning Disability (SLD) and Speech Language Impairment (SLI) pursuant to an eligibility and IEP meeting held on September 23, 2016. The Student has deficits in the areas of expressive, receptive, and oral language; written expression; reading comprehension and fluency; math reasoning and fluency. He has been previously diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), predominantly inattentive presentation

and Central Auditory Processing Disorder (CAPD). (Testimony of PSY, Parent⁴, Dr. G⁵, Dr. B⁶; SD # 18-20; PE #1, 29, 48, 56, 67, 81.)

2. PSY⁷ performed the September 28, 2017 psychological reevaluation of the Student.

(Testimony of PSY; SD #18.)

3. Prior to the Psychological Re-Evaluation of the Student, an Assessment Planning meeting was held on September 21, 2017. Parent participated in the Assessment Planning meeting. The Assessment Plan contained the areas in which the Student was to be evaluated. Neither cognitive testing nor social emotional testing were indicated as part of the Assessment Plan. Parent reviewed the Assessment Plan and signed the Consent for Reevaluation. Parent did not raise any concerns related to the areas identified for evaluation in the Assessment Plan. (Testimony of PSY, Parent; PE# 30.)

4. At the time of her re-evaluation, PSY was not aware of any concerns related to the Student's anxiety in the school setting. If she had been made aware of social emotional concerns raised by Parent, she would have spoken to Parent as part of her re-evaluation. (Testimony of PSY.)

5. PSY noted the following social emotional concerns: Due to significant language deficits with both receptive and expressive language, the Student has difficulty reading social situations and making connections with his peers. He does not advocate for himself and can have difficulty understanding instructions and holding a conversation. (SD #18.)

⁴ Parent is a licensed reading specialist in Illinois. She does not work with students with disabilities. She does not use multi-sensory teaching methods and is not Wilson or Orton Gillingham trained. (Testimony of Parent; PE #96.)

⁵ Dr. G is an Educational Psychologist who evaluated the Student in July 2019. (Testimony of Dr. G; PE #97.)

⁶ Dr. B holds a PhD in Child and Family Psychology. She is currently an Associate Professor at California State University, Fullerton in the Department of Social Work and a Clinical Associate at the University of Southern California in the Department of Psychology. She assessed the Student in September 2019 (Testimony of Dr. B; PE #95, 109.)

⁷ PSY is employed by the District as a school psychologist and has been so employed for 19 years. She holds a Master's of Education Degree with a focus in school psychology. She is licensed by the State of Illinois as a school psychologist.

6. As part of her re-evaluation, PSY reviewed the following standardized assessments from TDS: Woodcock-Johnson IV Tests of Achievement Form A (WJ-IV), Woodcock Reading Mastery Test, 3rd Edition, and Test of Written Spelling-5. (Testimony of PSY; SD# 18.) TDS teachers were licensed, credentialed special education teachers. (Testimony of MD.)

7. As part of her re-evaluation, PSY observed the Student in the classroom during literacy/reading. She interviewed the Student and one of the Student's teachers. PSY also reviewed the following prior assessments of the Student: Neuropsychological evaluation of Dr. [REDACTED] [REDACTED] (March 2015), Psychological Special Evaluation performed by the District (September 2014), and Central Auditory Processing Evaluation of Dr. [REDACTED] [REDACTED] (2014). (Testimony of PSY; SD #18.)

8. PSY noted that the Student was somewhat inattentive during her classroom observation of him. She intended to raise this observation at the Student's eligibility and IEP meeting. Based upon the discussion at said meeting, PSY may have proceeded with requesting completion of BASC rating scales. PSY was aware that the Student had previously been diagnosed with ADHD – predominantly inattentive type. (Testimony of PSY; SD #18.)

9. An Eligibility and IEP meeting was never convened for the Student in September 2017. The last Eligibility and IEP meeting was held on September 23, 2016. (Testimony of PSY, MD, RK, DR, Parent; SD# 20.)

10. The Woodcock-Johnson IV Tests of Achievement Form A (WJ-IV) and Woodcock Reading Mastery Test, 3rd Edition are nationally normed academic assessments. (Testimony of PSY.)

11. The Woodcock-Johnson IV Test of Achievement Form A (WJ-IV), Woodcock Reading Mastery Test, 3rd Edition, Listening Comprehension Test Adolescent, EVT-2, and PPVT-4 were

administered by licensed, certified teachers at TDS. The Listening Comprehension Test Adolescent, EVT-2 and PPVT-4 were done for this Student, and all students, as part of Fall 2017 screening. These are used for internal screening to monitor student growth from year to year at TDS. (Testimony of PSY, MD; PE #37-39.)

12. No testimony or documentary evidence was presented at hearing to support Parent's contention that the Woodcock-Johnson IV was administered so as to be discriminatory on a racial or cultural basis. (Testimony of PSY, Dr. G.)

13. No testimony or documentary evidence was presented at hearing to support Parent's contention that the Woodcock-Johnson IV, Listening Comprehension Test Adolescent, EVT-2 and PPVT-4 were administered by personnel who were untrained and not knowledgeable of the procedures for administration thereof. (Testimony of MD, PSY, Dr. G; SD #18.)

14. PSY relied upon the assessments performed by TDS staff in her own evaluation. The results of same were consistent with her findings and the findings of the prior evaluations of Dr. [REDACTED] and Dr. [REDACTED] (Testimony of PSY; SD #18; PE # 56, 67.)

15. PSY assessed Student's academic performance as it related to math, reading fluency and comprehension, written language, expressive and receptive language. PSY also noted that Student had a prior diagnosis of ADHD and a central auditory processing disorder. (Testimony of PSY; SD# 18.)

16. PSY's evaluation results were consistent with the later findings of Dr. G and Dr. Atkinson regarding the Student's disabilities, deficits, and cognitive functioning. (SD #18; PE # 1, 48, 56, 67.)

17. This Hearing Officer finds that PSY is a licensed, experienced school psychologist.

18. This Hearing Officer further finds PSY's testimony at hearing to be credible and persuasive based upon her educational background, credentials, and extensive experience as a school psychologist. PSY's evaluation results are found to be consistent with the prior findings of Dr. [REDACTED] and Dr. [REDACTED] and consistent with the current findings of Dr. G and Dr. [REDACTED] lending further credibility to her evaluation results and hearing testimony.

19. After the conclusion of PSY's re-evaluation, neither an Eligibility nor an IEP meeting was held for the Student as the Student had been released from TDS on October 4, 2017 and Parent refused to return to TDS. The Assessment Plan dated September 21, 2017 contemplated a speech language assessment for the Student. However, such an assessment would have been done in the school setting and the Student was not enrolled in school after October 4, 2017 until Spring 2019. (Testimony of MD⁸, DR⁹, Parent; PE# 30.)

20. Dr. G did not speak to PSY, did not attend any IEP meetings for the Student, did not review PSY's reevaluation report until after his report was complete. The purpose of his assessment was to assess the Student's current levels of performance and design an intervention plan for his go-forward success. (Testimony of Dr. G.)

21. At hearing, Dr. G testified that he was a licensed special education teacher in Illinois and that said license was current. The District presented evidence at hearing to rebut this testimony. The District produced documentation from ISBE which reflected that Dr. G's license had lapsed. Dr. G conceded that the District's information was accurate and that his Illinois special education teacher's license had in fact lapsed. (Testimony of Dr. G; SD #22.)

⁸ MD is the Admissions Director and liaison to all school districts at TDS and has been so employed for the past six years. MD holds a Bachelor of Science in Sociology, a Master's Degree in Social Work. He holds a Type 73 Illinois license as a school social worker and an Illinois Type 75 Administrators license with a Director of Special Education endorsement.

⁹ DR holds a Bachelor's Degree in Special Education and a Master's Degree in Community Counseling and General Ed Administration with an endorsement in Special Education Administration. She is employed by the District as a District Representative for charter schools. She has been employed by the District for approximately 18 years.

22. Parent obtained a private psychoeducational evaluation from Dr. G in July 2019 at a cost of \$2,500.00 for which she seeks reimbursement. (Testimony of Parent, Dr. G; PE #1.)

Least Restrictive Environment

23. The IEP Team considered the possibility of the Student's reintegration into the general education setting at the September 23, 2016 IEP meeting and determined that it was not appropriate at that time. (Testimony of MD; SD #20.)

24. The IEP Team considered the possibility of the Student's reintegration into the general education setting at the February 20, 2017 IEP meeting, at which time extended school year services were added for the Student, and determined that it was not appropriate at that time due to the Student's academic deficits in the core academic areas of reading and math. (Testimony of MD; SD # 19.)

25. MD's hearing testimony, related to the IEP team's consideration of the Student's reintegration into the general education setting in September 2016 and February 2017, was unrebutted by Parent at hearing. (Testimony of MD, Parent.)

26. The Student did not attend TDS's extended school year (ESY) program during the Summer of 2017 as Parent chose not to send him for ESY services. (Testimony of Parent; PE #118 p. 1797.)

Free Appropriate Public Education

27. TDS is a well reputed therapeutic day school that educates students with specific learning disabilities including speech language impairments and focuses primarily on academic achievements for those students. It is well known for its researched based programming designed to remediate language issues. (Testimony of Dr. S¹⁰, Dr. G; PE #1.)

¹⁰ Dr. S is the Executive Director of TDS.

28. TDS is an excellent school for students with learning disabilities and Dr. G expected that the Student would receive a high level of appropriate interventions there. (Testimony of Dr. G.)

Reading & Language Goals in September 23, 2016 & February 20, 2017 IEPs

29. At the beginning of 6th grade, the Student was reading at the Fountas & Pinnell instructional level L (middle of second grade) which was up three levels from the prior year. (SD #19.)

30. The Student's present levels of performance indicate that his decoding was strong however, his reading comprehension of inferential questions continued to be an area of great need for him. (SD #19.)

31. The Student's decoding and reading comprehension present levels of performance in the September 2016 and February 2017 IEPs were consistent with Dr. B's review of the Student's profile. (Testimony of Dr. B.)

32. The Student's September 2016 and February 2017 IEP reading goal focused on improving his higher order thinking skills by making reasonable inferences (why, how), identifying problems and solutions, and comparing and contrasting story elements. Benchmarks of making reasonable inferences with 75% accuracy and 1-2 verbal or non-verbal instructional cues were set to assist the Student in achieving his reading goal. (Testimony of Dr. B; SD #19.)

33. The Student made expected progress toward his IEP reading goal during the 2016-2017 school year. (SD #21; PE #118 p. 1839-1840.)

34. The Student's reading curriculum was researched based. It was planned for him to participate in the Wilson reading program. (Testimony of MD, Dr. S.)

35. Parent did not want a "canned" reading program for the Student. She did not want him to participate in the Wilson reading program. (Testimony of Parent.)

36. Dr. B believed that the Wilson reading program would have benefited the Student as it is a multi-sensory teaching methodology for reading. It has both fluency and comprehension components. (Testimony of Dr. B.)

37. In his July 2019 Psychoeducational Evaluation, Dr. G noted that the Student's performance on intellectual testing was slightly higher than previous evaluations. (Testimony of Dr. G.; PE #1.)

38. Dr. G noted that "with the possible exception of [REDACTED] School no remediation plan had ever been put into place to address the Student's underlying processing, executive, or language deficiencies. (Testimony of Dr. G; PE #1.)

Math Goals in the September 23, 2016 & February 20, 2017 IEPs

39. During the 2016-2017 school year, the Student's 6th grade year, he was in a math group with two student. They used the Math Expressions program which is a researched based intervention. There is a scope and sequence for the math expressions program and it does have a math fluency component. (Testimony of SF¹¹; SD #19.)

40. The September 23, 2016 and February 20, 2017 IEPs identified that the Student needed work on rounding, multi-step word problems and fractions. His greatest challenge was understanding the language of the math problem and applying his prior knowledge to the math operations to help solve the problems. (SD #19.)

41. The Student had one math goal. His present levels of performance indicated that, given the baseline Aimsweb math (M-Comp) assessment, the Student was able to add and subtract without regrouping. He was inconsistent and did not attempt some of the problems that involved regrouping. The Student was proficient with 1-digit by 1-digit multiplication facts and adding

¹¹ SF was the Student's 6th grade math teacher. She holds a Bachelor's Degree in Special Education, a Master's Degree in Reading and an LBS1. She has been employed at TDS for 15 years. SF was on maternity leave from November 2016 to February 2017. However, another licensed teacher, who was also an LBS1, replaced her.

fractions with like denominators. When given the baseline Math Concepts and Application (M-CAP) probes, the Student was able to use a graph to answer questions, measure items, and answer word problems with multiplication. (SD #19.)

42. The Student's math goal was as follows: The Student will solve word problems involving addition and subtraction of fractions referring to the same whole number and having like denominators with 80% accuracy. Quarterly benchmarks included the following: (1) the Student will add and subtract multi-digit whole numbers of, up to four digits, with and without regrouping at 80% accuracy; (2) When using manipulative, pictures, and diagrams, the Student will multiply a whole number, of up to three digits, by a one-digit whole number at 80% accuracy; (3) When using manipulatives, pictures and diagrams, the Student will solve word problems with whole numbers using the four operations with 80% accuracy. (SD #19.)

43. IEP accommodations and modifications included use of a calculator and visual cues and guides. (SD #19.)

44. SF writes IEP goals in the areas in which the Student had deficits. (Testimony of SF.)

45. The Student met his math goal and benchmarks for the 2016-2017 school year. He worked in a small group with one other student and was making progress. If the Student had not been meeting his goal, SF would have convened an IEP meeting to change his goal. (Testimony of SF; SD #21.)

46. At the beginning of the school year, the Student was working at a 4th grade level. As he met his math goal, he was getting closer to performing grade level work. (Testimony of SF.)

47. Parent articulated concerns regarding the Student's math homework when SF was on maternity leave and there was a substitute teacher. TDS responded by convening a conference call with Parent, the substitute math teacher, and the school principal. TDS indicated that they

would make homework consistent with the Student's IEP goal per Parent's request. (Testimony of Parent.)

48. Dr. G is very familiar with TDS. However, he is not familiar with TDS' math curriculum and was not familiar with the math curriculum during the 2016-2017 and 2017-2018 school years. (Testimony of Dr. G.)

49. Dr. B did not know the Student during the 2016-2017 and 2017-2018 school years. She was not familiar with TDS or the math curriculum used there during the time period in question. (Testimony of Dr. B.)

Social Studies and Biological & Physical Science Instruction at TDS

50. The Student's September 23, 2016 and February 20, 2017 IEPs provided that the Student was to receive Social Sciences and Biological & Physical Sciences instruction in the general education setting with only accommodations and/or modifications. (SD #19; Testimony of MD.) This was the product of a computer generated form that does not take into consideration the Student's placement. The Student was enrolled at TDS during that time period and TDS did not offer any general education instruction. (Testimony of MD.)

51. During the 2016-2017 and 2017-2018 school years, until the Student's release from TDS, the Student received Illinois State approved curriculum in Social Studies and Biological and Physical Sciences at the sixth grade level with modifications and accommodations. He received the same 6th grade instruction in these areas as his non-disabled peers. He was given tests and assessments to monitor his progress based upon Illinois State approved textbooks. TDS did not award letter grades for 6th grade students. Progress reports were provided to parents with a summary of progress in those areas. (Testimony of MD.)

52. TDS did not write goals for the Student in the areas of Social Studies and Biological and Physical Sciences as students do not have disabilities in those specific areas. The Student had disabilities in the areas of reading, language and writing. The Student's disabilities were addressed in Social Studies and Biological and Physical Sciences via accommodations and modifications and not goals. (Testimony of MD; SD# 19.)

Social Work Services

53. The Student's September 23, 2016 and February 20, 2017 IEPs provide for 60 minutes per week of direct social work services in a separate class and 15 minutes per month of consultation/collaboration between the social worker and special education teacher. The Student's IEPs also provide a social emotional goal to assist the Student in identifying specific emotions he feels in authentic situations. (SD #19.)

54. In January 2017, Parent expressed to TDS concerns regarding the Student's social work services indicating that she believed that playing games was the only form of instruction he was receiving. (Testimony of Parent, MD; PE #118, p. 1795.)

55. TDS changed the social worker assigned to the Student in February 2017. The new social worker changed the Student's programming in response to Parent's concerns. Parent conceded that she agreed with this change in programming as it met the Student's needs. (Testimony of MD, Parent; PE # 43 p. 479, 482, 485, 503-505.)

56. The assigned social worker provided, via email, detailed information indicating that the Student's goals within his Social Communication Group utilized a team approach to facilitate improved social skills, pragmatic language skills and increasing understanding and expressive use of emotional vocabulary. The email detailed the interventions used and the Student's

progress related to same. (Testimony of MD, Parent; PE #118 p. 1795-1799; 43 p. 479, 482, 485, 503-505.)

57. The Student met his social work goal in small group per the IEPs. (PE # 43 p. 479.)

Alleged Failure to Convene IEP meetings from February 20, 2017 through December 2018

58. An IEP meeting was held for the Student on September 23, 2016. At that time, the Student's proposed reevaluation date was September 12, 2017. (SD #20.)

59. An IEP meeting was held on February 20, 2017. Both parties, at hearing, stipulated that on that date, extended school year services were added to the Student's September 23, 2016 IEP. This was the only change made to the IEP. (Stipulation of Parent's Counsel and District Counsel at hearing.)

60. After his release from TDS on October 4, 2017, the Student was not enrolled in a District school until early 2019. (Testimony of RK¹², AO¹³, DR.)

61. After the Student's release from TDS, Parent refused to meet with TDS staff for purposes of an eligibility and IEP meeting. (Testimony of RK, DR, MD.)

62. After the Student's release from TDS, the District reached out to Parent multiple times. However, Parent did not make the Student available for evaluation. (Testimony of RK, DR, MD.)

63. No testimony or documentary evidence was presented at hearing to support Parent's contention that she requested information relative to TDS staff qualifications and that said information was not provided. (Testimony of Parent.)

¹² RK holds a Master's Degree in Special Education. He has over 15 years of experience in special education. He managed a team of field administrators who oversaw the Student's case in 2017-2018.

¹³ AO holds a Bachelor's Degree in special education. He holds a Master's Degree in Elementary School Counseling. He holds a Master's Degree in Education in General Administration with a Director of Special Education endorsement. He has been employed by the District for 22 years. He is the Manager of non public and charter schools for the District.

64. No testimony or documentary evidence was presented at hearing to support Parent's contention that she received incomplete progress reports from December 6, 2016 through December 20, 2018 or that progress reports received did not provide information regarding the Student's grades, progress toward IEP goals and benchmarks. (Testimony of Parent; SD #21.)

65. The District provided the Student's IEP Report Card covering the period from November 2016 through June 2017 at hearing. Said IEP Report Card provides the Student's IEP goals and benchmarks, and his progress toward same for that period and is complete. (SD #21.)

Site for Implementation of IEP after Release from TDS

66. TDS notified the District on August 28, 2017 that it would no longer be able to provide educational services and supports to the Student. (Testimony of DR, Dr. S; PE #41.)

67. The District referred the Student and Parent to the following therapeutic day schools for consideration in September – October 2017: South Central Community Services, ██████████, ██████████, and ██████████ Academy. (Testimony of RK, DR, JG; SD #3, 5, 6, 13-14.)

68. ██████████ Day School was also considered. However, it was not available to the Student as it either lacked capacity to enroll the Student or the Student did not meet the rigorous IQ requirements of the school. (Testimony of RK.)

69. ██████████ ██████████ Services, ██████████ Academy, ██████████ Academy and ██████████ Day School are all therapeutic day schools approved by the Illinois State Board of Education (ISBE) to provide educational services and supports to students with learning disabilities and speech language impairments. (Testimony of RK, DR, JG, AO.)

70. ██████████ Services and ██████████ were willing and able to enroll the Student. (Testimony of RK, JG; SD # 13-14.)

71. Parent refused to tour or enroll the Student at South Central Community Services.

(Testimony of RK, Parent; SD #7.)

72. Parent refused to consider, tour or enroll the Student in AAA Academy stating that it was “out of the question”. (Testimony of RK, Parent; PE #22, p. 387.)

73. In September 2017, the District also proposed for Parent’s consideration, several multi-sensory programs located within the District including the following: ██████ Elementary School, ██████ Elementary School, and ██████ Elementary School. (Testimony of DR; PE #22, p. 386.)

74. Parent refused to consider a multi-sensory program for the Student. (Testimony of DR, Parent; PE #22, p. 385.)

75. In October 2018, the District referred the Student and Parent to the following therapeutic day schools for consideration: ██████ Services, ██████ ██████, ██████ School, ██████ Academy, and ██████ - South Campus. (Testimony of AO, EW, JG; SD #9-15.)

76. Parent refused to accept offers of placement at any of those schools. Parent refused to participate in an intake and refused to set up tours and interviews with any of the proposed schools. The principal of ██████ Academy attempted to reach out to Parent through a family friend after direct attempts to contact her by District personnel and the ██████ principal were unsuccessful. (Testimony of AO, JG, EW; SD #9-15.)

77. ██████ Services, ██████, ██████ School, ██████ Academy, and ██████ Academy - South Campus are all ISBE approved to provide educational services and supports to students with learning disabilities and speech language impairments. (Testimony of RK, AO.)

78. Parent utilized information from the individual school's websites only in arriving at her determination to refuse the offered placements. (Testimony of Parent.)

79. Parent's expert, Dr. G, believed that the best way for Parent to assess whether an offered school was appropriate for the Student would be to review the school's website, schedule an interview and tour of the school, observe at the school, and speak to the parents of other students at the school to obtain information about the school environment. (Testimony of Dr. G.)

80. The Hearing Officer stopped the hearing on at least three (3) separate occasions to remind the parties of the need to present evidence related to the requested compensatory education Qualitative Approach including the facts necessary for the legal framework related to same for each alleged FAPE denial, including the following: (1) duration of the alleged FAPE denial; (2) Student's level of functioning prior to the time of the alleged FAPE denial; (3) Estimate the Student's rate of progress in each area; (4) Determine the educational deficits that accrued during the period of denial and reasonably calculate where the student would have been but for the FAPE denial; (5) Identify any ancillary deficits; (6) Identify the compensatory education measures needed to correct the identified deficits that would yield tangible results; (7) Determine the presence of any equitable factors that warrant a reduction or denial of the anticipated award. Despite these reminders, evidence regarding same was not presented at hearing other than Parent's compensatory education package request. (PE #109.)

CONCLUSIONS OF LAW

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

The Individuals with Disabilities Education Act (“IDEA”) guarantees children with disabilities the right to a free, appropriate, public education (“FAPE”). 20 U.S.C. §1412(a)(1). IDEA defines a child with a disability as a child having a specific physical, mental, or emotional condition who, because of the disability, needs special education and related services. 34 C.F.R. §300.8. To be eligible for special education, the student must fit the statutory definition of a “child with a disability.” 20 U.S.C. §1401(a)(1)(A); 34 C.F.R. §300.8. Specific evaluation procedures must be used for determining whether a child fits the statutory definition of a “child with disabilities.” See 34 C.F.R. 300.8(a)(1), 300.304-300.311. In addition, all of the statutory definitions require that the disability “adversely affect the child’s educational performance.” See 34 C.F.R. 300.7(b)(1-13); *Mary P ex rel. Michael P. v. Illinois State Bd. of Educ.*, 919 F. Supp. 1173 (N.D. Ill. 1996.) If the student is deemed eligible, then the IEP team determines precisely what services are appropriate. These decisions are outlined in an Individualized Education Program (“IEP”). See 34 C.F.R. §§300.340-300.350; 23 Ill. Admin Code §226.5, 226.562.

Evaluation

The District has the burden of proof for the appropriateness of its evaluations. 105 ILCS 5/14-8.02(b); *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, 41 F.3d 1162, 1167, 1169 (7th Cir. 1994). An appropriate evaluation is one which complies with the pertinent federal and state regulations. *Krista P. v. Manhattan School District*, 255 F. Supp. 2d873, 887 (N.D. Ill. 2003). In this matter, the Parent requested an IEE which resulted in the District’s filing of a Due Process Complaint Notice on November 26, 2018. (IHO Exhibit #1.) The Parent takes issue with several aspects of the District’s psychological evaluation dated September 21, 2017 as follows.

Parent first alleges that the psychological reevaluation did not use a variety of assessment tools and strategies, specifically the Woodcock-Johnson, to gather relevant functional, developmental and academic information about the Student specifically related to the Student's reading and math abilities. The testimony and documentary evidence presented at hearing illustrate the following: PSY reviewed the Woodcock-Johnson IV Tests of Achievement Form A (WJ-IV) and Woodcock Reading Mastery Test, 3rd Edition results administered and provided by TDS. (FF #6.) Both tests are nationally normed academic assessments which provided information related to the Student's reading and math skills. Results revealed significant weaknesses in the areas of applying math concepts, verbal reasoning, and reading comprehension. (FF# 6, 10.)

Parent next takes issue with several assessments that were administered and completed by TDS staff. The results of said assessments were adopted by PSY and incorporated into her evaluation report, specifically, the Woodcock-Johnson IV, Listening Comprehension Test Adolescent, EVT-2 and PPVT-4 assessments. Parent alleges that the Woodcock-Johnson IV was selected and administered so as to be discriminatory on a racial and cultural basis. Parent further alleges that the Woodcock-Johnson IV, Listening Comprehension Test Adolescent, EVT-2, and PPVT-4 were not administered by trained and knowledgeable personnel and were not administered in accordance with instructions provided by the producer of the assessments. Parent argues that PSY acted improperly by relying upon the results of standardized assessments that others had administered. However, PSY is a licensed, credentialed school psychologist with over 19 years of experience in her field. (FF #2.) She was familiar with TDS and the qualifications of the teachers there. (FF #6.) Further, neither the IDEA, nor the Illinois Administrative Code, provide that a specific individual must administer specific assessments or

that all assessments must be administered by one individual. In fact, the IDEA contemplates a collaborative approach in which information about the Student is obtained from multiple sources. *See* 34 C.F.R. §300.304. This Hearing Officer finds PSY's testimony and findings to be credible based upon her educational background, credentials, and extensive experience as a school psychologist and to create a presumption that the assessments were appropriate. (FF #18.) Parent provided no evidence at hearing, or case law, to rebut this presumption or to support her position that PSY acted improperly by adopting the results of assessments administered by others. (FF #12-13.) The only evidence offered was that of Parent's expert, Dr. G, who stated a preference for performing all of his own assessments. Further, PSY's findings were consistent with those of prior evaluations of the Student and those performed subsequently by Dr. G and Dr. Atkinson, lending further credibility to her results. (FF # 14-16.) Therefore, this Hearing Officer finds Parent's contentions to be without merit.

Parent alleges that PSY did not assess the Student in all areas of suspected disability, specifically, academic performance as it relates to math, reading fluency and comprehension, writing, expressive and receptive language, and ADHD pursuant to 34 C.F.R. §300.304(c)(4). However, the testimony and documentary evidence presented at hearing illustrate the opposite. PSY noted all of the above areas of suspected disability in her report. She noted that the Student has a Specific Learning Disability and Speech Language Impairment. She noted that the Student has deficits in the areas of expressive, receptive, and oral language; written expression; reading comprehension and fluency; math reasoning and fluency. He has been previously diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), predominantly inattentive presentation and Central Auditory Processing Disorder (CAPD). (FF #1.) As part of her assessment, PSY reviewed current assessment data provided by TDS and reviewed prior reports from outside

providers in the form of Dr. [REDACTED] Neuropsychological Evaluation from 2015, Dr. [REDACTED] Central Auditory Processing Evaluation from 2014, a prior District Psychological Special Evaluation performed in 2014. (FF # 14-15.) She also noted social emotional concerns related to the Student. (FF # 5.)

At hearing, Parent maintained that the Student was not assessed in all areas of suspected disability as the Student did not receive a speech language assessment. However, this claim is without merit. The Assessment Plan called for a speech language assessment which would have been done in the school setting. After the Student's release from TDS, Parent did not enroll the Student in school until Spring 2019 and did not make the Student available for further assessment. (FF # 19, 41-42.) The District cannot be held accountable for failure to assess the Student in speech language when Parent refused to make him available for such an assessment.¹⁴ Based upon the testimony and documentary evidence presented at hearing, Parent has not met her burden with respect to these allegations.

Parent next alleges that the documentation of the determination of eligibility did not contain a statement concerning the effects of cultural factors on the child's achievement level pursuant to 34 C.F.R. §300.311. However, in this case, an eligibility meeting was never held as the Student was released from TDS and Parent refused to meet with TDS staff to hold the Student's scheduled September 2017 eligibility and IEP meeting. (FF #9, 19.) Thus, Parent has not met her burden with respect to this allegation.

¹⁴ At hearing, Parent presented the testimony of JL, Parent's private speech language pathologist. During his testimony, JL presented invoices for his speech language services dated from January 8 – May 10, 2018 for which Parent seeks reimbursement. (Testimony of JL; PE #101.) District counsel objected on the basis that Parent was eligible to seek reimbursement for same pursuant to a prior Settlement Agreement & Release dated May 19, 2015. (SD #23.) Based upon the testimony and documentary evidence presented at hearing, and emails from both parties presented to this IHO after the conclusion of the hearing, this Hearing Officer finds that Parent is eligible to seek reimbursement for these expenses pursuant to SD #23. Therefore, any award as part of this decision would be duplicative.

Parent alleges that PSY did not review existing evaluation data on the Student, including classroom-based observations pursuant to 34 C.F.R. 300.305(a)(1)(ii). However, the testimony and documentary evidence presented at hearing reveal that PSY did observe the Student in the classroom as part of her evaluation and noted her observations in her report. (FF #8.) Thus, Parent has not met her burden with respect to this allegation.

Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that the District's September 21, 2017 Psychological Evaluation was appropriate pursuant to 34 C.F.R. §300.304 and §300.305. Therefore, Parent's request for reimbursement for the psychological evaluation of Dr. G is hereby denied.

This Hearing Officer further finds that the District cannot be held accountable for failure to assess the Student in speech language when it was Parent who refused to make the Student available for same by choosing not to enroll him in a subsequently offered therapeutic day school placement.

Free Appropriate Public Education (FAPE)

The Individuals with Disabilities Education Act ("IDEA") guarantees children with disabilities the right to a free, appropriate, public education ("FAPE"). 20 U.S.C. §1412(a)(1). In order to determine whether a school district has provided a FAPE requires the determination of whether the school district complied with the procedural and substantive requirements of IDEA. *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982). As recently clarified by the United States Supreme Court, under the Individuals with Disabilities Education Improvement Act ("IDEA"), a school satisfies its substantive obligation to provide a free appropriate public education by offering a child "an IEP reasonably calculated to enable a child to make progress in

light of the child's circumstances." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.) "The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the IDEA to state and local educational agencies in cooperation with the parents or guardians of the child." *Rowley* at 207. Educators "have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents." *Lachman v. Illinois State Bd. Of Educ.*, 852 F.2d 290, 297 (7th Cir. 1988); *Williams v. Milwaukee Public Schools* (E.D. Wis. 2012).

In matters alleging a procedural violation, the hearing officer may find that a student did not receive a FAPE only if the procedural inadequacy impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decisions-making process regarding the provision of a FAPE to the parent's child or caused a deprivation of educational benefit. 20 U.S.C. §1415(f)(3)(E); 34 C.F.R. §300.513(a); *Rowley* at 206-207. In the instant case, Parent alleges the following procedural violations of the IDEA: 1.) That the District failed to convene any IEP meetings for the Student from February 2017 to December 2018; 2.) That the District failed to provide progress reports regarding the Student's grades and progress toward IEP goals and benchmarks. The testimony and documentary evidence presented at hearing reflects the following.

An IEP meeting was held for the Student on February 20, 2017 to add extended school years services to the September 23, 2016 IEP. (FF # 59.) The Student's triennial reevaluations and eligibility and IEP meetings were due in September 2017. An IEP meeting had been scheduled at TDS however it was cancelled as the Student had been released from TDS and Parent refused to meet with the TDS team or return to the school. (FF #60-62.) The testimony

from District witnesses RK and DR on this point was consistent and decisive. Parent refused to participate in an IEP meeting and refused to make the Student available for additional evaluation, i.e. the Speech Language Evaluation identified in the Assessment Plan. The Student remained unenrolled in a District school until Spring 2019. (FF #60.) The lack of any IEP meetings from September 2017 through December 2018 was by Parent's own design, not that of the District. Therefore, Parent fails to meet her burden on this alleged procedural violation.

The next alleged procedural violation is that the District failed to provide progress reports regarding the Student's grades and progress toward IEP goals and benchmarks. Students in 6th grade were not given letter grades. (FF #51.) At hearing, progress reports related to the Student's IEP goals covering the period November 2016 through June 2017 were presented and introduced into evidence. (FF #64.) No testimony was presented by Parent at hearing to support this allegation. Therefore, Parent failed to meet her burden with respect to this procedural violation.

Parent next alleges multiple areas in which the Student's IEP and educational instruction was deficient while at TDS. "An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth. The child's circumstances are described by such information and drive the educational planning." See *Andrew F.*, 137 S. Ct. 988, 999.

The IDEA provides a specific framework for Individualized Education Programs (IEPs), composition of the IEP team, and development of the IEP among other things. See 34 C.F.R. §§300.320-300.325. Under IDEA, an IEP must include "(1) a statement of the child's present levels of academic and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum" and "(2)(i) [a] statement

of measurable annual goals, including academic and functional goals designed to (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum." 34 C.F.R. 300.320(a). "[A]n IEP is reasonably calculated to confer educational benefit when it is 'likely to produce progress, not regression or trivial educational advancement.'" *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7th Cir. 2004.) [T]he progress contemplated by the IEP must be appropriate in light of the child's circumstances. . . . The instruction offered must be '*pecially designed*' to meet a child's '*unique needs*' through an *individualized* education program." *Andrew F.*, 137 S.Ct. 988. The IEP is to provide a statement of the "special education and related services and supplementary aids and services . . . to be provided to the child." 34 C.F.R. 300.320(a)(4).

Parent first takes issue with various aspects of the Student's present levels of performance and receptive, expressive, oral language and reading comprehension goals. Parent maintains that the Student was denied FAPE in the area of reading when the present levels of performance were unclear with respect to the Student's instructional reading level and the goals were not designed to enable the Student to progress with respect to instructional and independent reading levels. The testimony and documentary evidence at hearing revealed the following. At the beginning of his 6th grade year, the Student was reading at the Fountas & Pinnell instructional level L (middle of second grade) which was up three levels for the prior year. (FF # 29.) The Student had a reading goal which addressed his deficits in the area of reading comprehension and he made expected progress toward that goal during the 2016-2017 school year. (FF #32-33.) The Student's next scheduled IEP meeting, in September 2017, was never held as the Student was released from TDS and Parent did not reenroll him in a District school until Spring 2019.

(FF # 19.) As the testimony and documentary evidence confirm, the Student's instructional reading level was clear and he was making expected progress toward his reading goal. Therefore, Parent has not met her burden with respect to this allegation.

Parent maintains that the Student's present levels of performance with respect to decoding, fluency, and reading comprehension were unclear and contradictory. She further maintains that the District did not use researched based interventions designed to meet the Student's unique decoding, fluency, and reading comprehension needs. However, Parent's own experts testified to the contrary. The Student's present levels of performance in decoding and reading comprehension, per his IEPs, were consistent with Dr. B's records review. (FF #31.) Further, the Student's reading curriculum was research based. (FF #34.) Parent's own expert, Dr. G, spoke very highly of TDS and its reputation for research based programming designed to remediate language issues such as those identified in the Student. (FF #27.) Further, Dr. G expected that the Student would receive a high level of appropriate interventions at TDS and alluded in his report to the fact that TDS most likely remediated some of the Student's language deficits. (FF #38.) While Parent takes issue with the Wilson reading program, her own expert testified that would be an appropriate research based intervention for the Student. (FF #34-36.) She further takes issue with the lack of a specified research based intervention within the Student's IEP. However, the IDEA does not require that IEPs specify the exact researched based interventions being used and Parent has not provided any statutory or case law to indicate otherwise. Not every research based intervention works for every Student. IDEA requires that the instruction must be '*speciall*y designed' to meet a child's '*unique* needs' through an '*individualized* education program.'" *Endrew F.*, 137 S.Ct. 988. It does not require that such a program be specifically named. While Dr. B took issue with the lack of present levels of

performance related to the Student's reading fluency, fluency was a complex issue for this Student. He had strong decoding abilities and average oral reading fluency however, he had difficulty actually comprehending what he was reading. (FF #38.) Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that Parent has not met her burden with regard to the alleged FAPE denial related to the Student's reading goals and present levels of performance.

Parent next takes issue with the Student's present levels of performance and IEP goals, accommodations and modifications as they relate to the academic area of math thus denying him FAPE. The testimony and documentary evidence presented at hearing illustrate the following: During the 2016-2017 school year, the Student's 6th grade year, he was in a math group with two student. They used the Math Expressions program which is a researched based intervention. There is a scope and sequence for the math expressions program and it does have a math fluency component. (FF #39.) The September 23, 2016 and February 20, 2017 IEPs identified that the Student needed work on rounding, multi-step word problems and fractions. His greatest challenge was understanding the language of the math problem and applying his prior knowledge to the math operations to help solve the problems. (FF #40.) One math goal was established, the Student's present levels of performance were identified, and benchmarks for achieving the stated goal were set. Math accommodations and modifications were also identified in the IEPs. (FF #41-43.) When Parent articulated concerns regarding the Student's math programming, TDS staff timely responded. (FF #47.) IEP goals were written to address the Student's deficits and would have been altered had that been necessary. Information regarding the Student's progress toward his IEP goal and benchmarks was provided to Parent reflecting that the Student was progressing and meeting his benchmarks and ultimate IEP goal. (FF #45-46.) While at hearing

Dr. B opined that the Student needed specific guidance on how to perform math steps, needed a scaffold and a sequential method of processing math, she conceded that she did not know if the Math Expressions curriculum was taught sequentially. She also expressed concern that math fluency was not addressed. However, the testimony provided by SF, the Student's math teacher, confirmed that the math curriculum did in fact have a fluency component. (FF #39.) Dr. B's testimony seemed to support the contention that the math goal and benchmarks did address the Student's identified areas of math need. While Dr. B opined that Direct Instruction curriculum would be better for this Student, she conceded that she was not familiar with TDS, its programming or curriculum during the time period in question, and did not know the Student during the time period in question. Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that the Parent has not met her burden with respect to the allegations related to the academic area of mathematics.

Parent takes issue with the Student's Social Studies and Biological & Physical Science instruction at TDS alleging that FAPE was denied when the District failed to identify his need for social studies and science instruction and failed to provide appropriate social studies and science instruction when goals in these areas were not provided, instruction was not grade level, and the curriculum was not appropriate given the Student's educational needs and disability. Parent makes two inconsistent arguments with respect to social studies and natural science instruction. Parent first argue that FAPE was denied as the Student's IEP provided for general education social studies and science instruction and TDS did not offer any general education courses. Parent next argues that FAPE was denied as IEP goals were not established for social studies and science instruction. The testimony and documentation evidence presented at hearing reflects the following: During the 2016-2017 and 2017-2018 school years, the Student was

enrolled at TDS. TDS is a private therapeutic day school that does not offer any general education instruction. Parent knew this as the Student had been enrolled, with Parent's agreement, since Summer 2015. (FF #50.) During the 2016-2017 and 2017-2018 school years, until the Student's release from TDS, the Student received Illinois State approved curriculum in Social Studies and Biological and Physical Sciences at the sixth grade level with modifications and accommodations. He received the same 6th grade instruction in these areas as his non-disabled peers. He was given tests and assessments to monitor his progress based upon Illinois State approved textbooks. TDS did not award letter grades for 6th grade students. Progress reports were provided to parents with a summary of progress in those areas. (FF #50-52.) TDS did not write goals for the Student in the areas of Social Studies and Biological and Physical Sciences as students do not have disabilities in those specific areas. The Student had disabilities in the areas of reading, language and writing. The Student's disabilities were addressed in Social Studies and Biological and Physical Sciences via accommodations and modifications and not goals. (FF# 52.) This testimony was un rebutted by Parent at hearing. While Parent testified that she received social studies and science materials from TDS and believed them to be a very low level, below the 6th grade level, she failed to present any evidence at hearing to support this assertion. Therefore, Parent has failed to meet her burden with respect to this alleged FAPE denial.

Parent alleges that the Student was denied FAPE when the social work services provided in the September 2016 through February 2017 IEPs were inadequate to address the Student's pragmatic language and social anxiety needs. The testimony and documentary evidence presented at hearing illustrate that the Student's IEPs provided a social emotional goal to assist the Student in identifying specific emotions he feels in authentic situations. (FF #53.) Parent

complained to TDS regarding the social work programming. Within four weeks, TDS changed the Student's social worker and social work programming in response to Parent's complaint. Parent conceded that the new social worker and social work instruction met the Student's needs. (FF #54-56.) The assigned social worker provided detailed information regarding the Student's programming, interventions used and the Student's progress related to same. The Student met his social work goal per the IEPs. (FF #56-57.) While Dr. B, Parent's expert, based upon her review of records alone, disagreed that the social emotional goal in the IEP worked on independence in a naturalistic setting, this appears to be in direct conflict with the information provided by the social worker providing services to the Student. (FF #56-57.) As Dr. B conceded at hearing that she was not familiar with TDS or its programming during the time period in question, and did not know the Student during the time period in question, this Hearing Officer finds her testimony to be unpersuasive on this point. This Hearing Officer further finds that TDS acted quickly to address Parent's concerns and in fact made requested changes, with which Parent agreed. Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that at all times in question, the Student was provided with a free appropriate public education as it relates to social work goals and services.

In the event that this Hearing Officer had found a FAPE denial relative to social work services, no testimony or documentary evidence was presented at hearing, despite this Hearing Officer's repeated requests for same, to allow her to determine the extent of any alleged deprivation and the appropriate compensatory education remedy for same. Parent's compensatory education request does not address this specific alleged violation. (FF #80.)

Parent next alleges that a free appropriate public education was not provided to the Student in the least restrictive environment and that the least restrictive environment was not

considered at the September 2016 and February 2017 IEP meetings. The IDEA contemplates that “an appropriate education is one that occurs in the least restrictive environment.” 20 U.S.C. §1412(a)(5); *Beth B. v. Van Clay*, 282 F.3d 493, 498 (7th Cir. 2002); *see Alex R. v. Forrestville Valley Comm. Unit Sch. Dist. #221*, 375 F.3d 603, 618 (7th Cir. 2004.) No evidence was presented at hearing to support this contention. The Student was initially enrolled at TDS in 2015 as the result of a Settlement Agreement and Release agreed to and signed by Parent. At both the September 2016 and February 2017 IEP meetings, the least restrictive environment was discussed and rejected by the IEP team due to the Student’s deficits in the core areas of reading and math. (FF #23-24.) Parent offered no testimony or evidence at hearing to rebut this. (FF #25.)

Parent’s final allegation is that the District failed to provide the Student with an appropriate site for implementation of the September 2016/February 2017 IEP and placement after his release from TDS in October 2017. The evidence on this point is overwhelming and does not support Parent’s contention. At hearing, no less than four (4) District witnesses testified and presented documentary evidence illustrating the numerous attempts made to find the Student a new school that would meet his educational needs and could implement his IEP. This Hearing Officer finds the testimony of RK, DR, JG, and AO to be credible and persuasive. These witnesses were specifically employed by the District to assist in securing private therapeutic day school placements of students, kept records of their efforts, and specifically recalled the events in this matter. Their respective testimonies were consistent and were corroborated by one another. In September – October 2017, no less than four (4) therapeutic day schools that serviced students with this Student’s disability categories and three (3) District schools with multi-sensory programs were presented to Parent. Parent summarily rejected all of them. (FF #66-76.) When

Parent reached out again to the District in Fall 2018, the District provided no less than five (5) therapeutic day schools for Parent's consideration. Again, Parent summarily rejected all of them. (FF #75-77.) Parent made her decision to summarily reject all of the proposed placements after a review of the school's respective websites. (FF #78.) She refused to participate in intakes, tours, and interviews with the proposed schools. The principal of ██████ Academy went so far as to attempt to reach out to Parent through a family friend after efforts to make direct contact failed. (FF #76.) Parent's own expert, Dr. G, believed that the best way for Parent to assess whether an offered school was appropriate for the Student would be to review the school's website, schedule an interview and tour of the school, observe at the school, and speak to the parents of other students at the school to obtain information about the school environment. Parent took none of these actions. (FF #78-79.) While Parent testified at hearing that she had never heard of ██████ ██████ until hearing and believed that all of the proposed schools served students with emotional disabilities, which she did not want for her child, this conclusion was based only upon her limited review of website information. Based upon the testimony and documentary evidence presented at hearing, Parent's contention that the District failed to provide FAPE when it did not offer the Student an appropriate site at which to implement his IEP after his release from TDS is unsupported.

Therefore, it is the determination of this Hearing Officer that, at all times in question, the District has provided the Student with a FAPE.

CONCLUSION

This Hearing Officer determines that:

At all times in question, the District provided the Student with a FAPE.

The Parent's requests to the contrary are hereby denied.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered: Parent's request for an IEE, or reimbursement for the Psychoeducational Evaluation of the Student by Dr. G, is hereby denied as the District has met its burden regarding the appropriateness of its evaluation.

Parent's requested relief of compensatory education is thereby denied and the complaint and amended complaint are dismissed with prejudice.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

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

NOTICE OF RIGHT TO APPEAL

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

Dated: September 27, 2019

/s/: Janet K. Maxwell-Wickett

Janet K. Maxwell-Wickett,

Impartial Hearing Officer

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

APPENDIX A

[Redacted] v. [Redacted] SD [Redacted]
Case No: 2019-DP-0146

Child	[Redacted]
Attending School	[Redacted]
Child's Parent(s)/Petitioner	[Redacted] (Parent)
Parent Witnesses:	
Private Educational Psychologist	Dr. [Redacted] (Dr. G)
Private	Dr. [Redacted] (Dr. B)
Private Speech Language Pathologist	[Redacted] (JL)
[Redacted]	CPS Legal Counsel (EW)
[Redacted]	Math Teacher [Redacted] School (SF)
Dr. [Redacted]	[Redacted] School Executive Director (Dr. S)
[Redacted]	CPS Manager of Non-Public School Supports (RK)
Joint Witnesses:	
[Redacted]	CPS liaison to [Redacted] School (MD)
[Redacted]	CPS ODLSS Manager of Separate Day Schools
[Redacted]	District Representative (DR)
[Redacted]	CPS Coordinator of Business Operations (JG)
[Redacted]	School Psychologist CPS (PSY)
Prior School:	[Redacted] School (TDS)

