

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

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

Student,

v.

Case No. 2019-DP-0153

█ School District No. █,

Mary Jo Strusz

Impartial Hearing Officer

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.*

PROCEDURAL BACKGROUND

On November 29, 2018, Petitioners filed a Due Process Complaint (“DPC”) against █ (“District”) pursuant to IDEA.¹ Petitioners are the parents (“Parents”)² of KMJ (“Student”), a Thirteen-year-old student with a disability who was originally found eligible for an IEP in January 2012 under the category of Developmental Delay.³ In December 2012, Student’s eligibility category was changed to Other Health Impairment, with a secondary category of Speech Language Impairment.⁴ In December 2015, the category of Emotional Disturbance was added.⁵ Parents’ DPC alleges that the District schools were unable to provide the “social, emotional, and learning supports” necessary to provide Student with a free and appropriate public education

¹ HO-1b, 29b. (References to the record in this case are designated as “HO-____.”)

² Personally identifiable information is in Appendix A.

³ *Id.*

⁴ *Id.*

⁵ HO-29b.

("FAPE") and seeks retroactive reimbursement and perspective placement of Student at a private therapeutic day school that allegedly can provide Student with the educational support and services necessary for a FAPE. ⁶

The impartial due process hearing officer ("IHO") was appointed in this matter on December 4, 2018⁷ and issued her initial status letter and preliminary order on December 8, 2018.⁸ The District submitted a response to the DPC on December 10, 2018.⁹ The parties waived resolution and mediation.¹⁰ The prehearing conference in this matter was set for January 23, 2019.¹¹

Parents' filed their prehearing conference disclosures on January 18, 2019.¹² The District filed its prehearing conference disclosures on January 22, 2019.¹³

The prehearing conference was conducted by recorded telephone conference call on January 23, 2019.¹⁴ Following the conclusion of the prehearing conference, the parties became aware of certain dates selected for the due process hearing were not available to their respective clients. A status conference was subsequently held on February 1, 2019 to select and confirm new hearing dates and to reset the 5-Day disclosure date.¹⁵ The Prehearing Report and Order was entered on February 1, 2019 and set the due process hearing for March 5,6,8,11 and 13, 2019.¹⁶

⁶ HO-1e, m-n.

⁷ HO-3.

⁸ HO-4.

⁹ HO-5.

¹⁰ HO-10i.

¹¹ HO-10b.

¹² HO-11.

¹³ HO -12.

¹⁴ HO-17.

¹⁵ Id.

¹⁶ Id.

On February 13, 2019, the IHO notified the parties by e-mail that the previously selected due process hearing dates were no longer available due to the IHO's appointment on an expedited due process case.¹⁷ On February 22, 2019, new hearing dates were set for April 23, 24, 25, 29, and 30, 2019, and the parties filed a joint motion to extend the 45-Day decision timeline to accommodate these new dates. The IHO granted the motion and entered an Order extending the timeline.¹⁸ A Revised Prehearing Report and Order was entered to include the new hearing dates on February 22, 2019.¹⁹

On April 16, 2019, the parties provided the IHO with copies of their proposed exhibits and proposed document and witness lists, and additionally filed their joint exhibit book.

The due process hearing took place on April 23, 25, 29, and 30, 2019 at the District Office located at [REDACTED] Ave., [REDACTED], Illinois. An official court reporter was provided by the District for all hearing dates. The hearing was closed to the public. Parents presented two witnesses,²⁰ the District presented six witnesses,²¹ and the parties called seven joint witnesses.²²

There was no stipulation of facts. The parties presented eight joint witnesses, the District presented six witnesses and the Parents presented one witness.

At the conclusion of the evidence presentation, the IHO admitted the following exhibits: Parents' Exhibits P-1, P-4, P-5, P-20, P-23, P-24, P-25, P-34, P-36, P-38, P-39, P-40, P-41, P-42, P-43, P-44 P-46, P-48, P-49, P-56, P-58, P-59, P-61, P-63, P-64, P-65, P-66, P-

¹⁷ HO-29.

¹⁸ Id.

¹⁹ Id.

²⁰ Personally identifiable information is in Appendix A.

²¹ Id.

²² Id.

67, P-68, P-75, P-76, P-78, P-79, P-80, P-81, P-82, P-83, P-94, P-95, P-96; District Exhibits R-1,2,3,4,5,6, R-10(14-15), R-10(26-27),R11-(1-22); Joint Exhibits 1-25.²³ During the hearing an objection was sustained to District Exhibit R10 (23-24) these documents were not admitted and are present solely to maintain the record for appeal.

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,²⁴ as well as independent research. This decision is issued within ten (10) business days after the hearing's conclusion, as required by Illinois law.²⁵

PARENTS' ISSUES AND REMEDIES REQUESTED

Parents' DPC raised the following issues, and this IHO certified the following issues at the Prehearing Conference for adjudication at the due process hearing:

Issue One: Whether the IEPs drafted for Student on September 7, 2016, and October 3, 2017 were reasonably calculated to provide a FAPE.

Issue Two: Whether CDS is an appropriate placement for Student for the extended school year ("ESY") 2019 and for the 2019-2020 school year.

Issue Three: Whether Student is entitled to compensatory educational services for the resulting from a violation of FAPE.

²³ Each exhibit is identified by "JE" for joint exhibits and includes the exhibit number and specific page in the exhibit.

²⁴ Copies of the closing statements and the supporting case law were provided to the IHO by the parties.

²⁵ 105 ILCS 5/14-8.02a(g55)(5).

Parents' DPC seeks the following remedies: The District should provide retroactive reimbursement, including costs for related services and transportation, for Student for the 2018 extended school year, as well as prospective placement at CDS for the 2018-2019 school year. In addition, the District should provide reimbursement for private evaluations and tutoring services and related costs secured during the 2016-2017 and 2017-2018 school years, as well as two additional years at CDS as compensatory education services, as well as any other relief ordered by the IHO.

THE DISTRICT'S RESPONSES

The District provided the following responses:

During Student's time at District schools, Student make progress that was commensurate with her unique profile of strengths and needs and appropriate in light of her unique circumstances. Student, with the aid of intensive special education services and supports provided by the District, made consistent and steady progress toward her goals and objectives and her overall functioning in the school environment while she was in District schools.

The District provided Student with a FAPE in the least restrictive environment available, and CDS, a therapeutic day school that does not provide the opportunity for access general education instruction or to Student's peers, is an inappropriate restrictive environment.

FINDINGS OF FACT

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

A. Background

A-1. Student is a thirteen (13) year old girl,²⁶ currently attending CDS.²⁷ Student is in the 7th grade and was unilaterally placed by the Parents²⁸ at CDS on June 15, 2018.²⁹ Student has resided in the District her entire life.³⁰

A-2. Student was initially found eligible for special education services on January 10, 2012, under the primary category of Developmental Delay.³¹ In December 2012, Student's eligibility category was changed from Developmental Delay to Other Health Impairment, with a secondary category of Speech Language Impairment.³² In December 2015, the category of emotional disturbance was added.³³ Student remains eligible for special education services,³⁴ though the category of emotional disturbance was dropped in December 2018.³⁵ Student has never been found eligible under any other IDEA category.

A-3. Early in life, Student missed a developmental milestone (turning over), however, there were no other areas of developmental difficulty.³⁶

A-4. At the age of four, Student suffered a head injury on a concrete floor, resulting in loss of consciousness,³⁷ eye rolling, and emesis.³⁸ Emergency Services was called but did not recommend taking Student to the emergency room.³⁹ Student's pediatrician did not recommend any treatment or testing following this incident.⁴⁰

²⁶ Personally identifiable information is in Appendix A.

²⁷ Id.

²⁸ Id.

²⁹ Mother and CDS Director testimony.

³⁰ Mother testimony

³¹ HO 1-b.

³² Id.

³³ JE2-5. These are the only categories identified for Student's IEP eligibility.

³⁴ HO 29-b.

³⁵ JE11-48.

³⁶ Mother testimony and JE 2-18.

³⁷ HO1-b (Due Process Complaint), and JE1-1.

³⁸ P1-1.

³⁹ Mother testimony.

⁴⁰ Mother testimony.

A-5. In August-September 2012, Student began seeing a Pediatric Neuropsychologist,⁴¹ who completed an evaluation of Student on September 12, 2012. This evaluation included a neuroscience developmental learning profile.⁴² Neuropsychologist completed another evaluation in 2017. This evaluation suggested Student had symptoms of possible brain issues.⁴³ As of December 2018, Student sees the Neuropsychologist every three months for evaluations and attends “brain training” therapy bi-monthly.⁴⁴

A-6. In 2012, Student began seeing a Neurologist⁴⁵ for neurological care and medication management.⁴⁶ Following the Neuropsychologist’s evaluation in 2017, Student completed additional neurological testing, including an MRI and sleep deprived EEG,⁴⁷ to determine if learning issues were related to neurological conditions.⁴⁸ The results of these tests indicated that there are no physiological issues with Student’s brain or brain activity.⁴⁹ Student does not have any seizure disorder.⁵⁰ There is no neurological basis for Student’s learning difficulties.⁵¹ The results of the MRI and EEG were not shared with the District.⁵²

A-7. Student has been on various medications during her school years, including a medication for anxiety.⁵³ Student’s last change of medication while attending District schools took place in December 2017.⁵⁴ As of December 2018, Student is no longer taking medication.⁵⁵

⁴¹ Neuropsychologist did not testify at this hearing. Personally identifiable information is in Appendix A.

⁴² P1(4-17),

⁴³ JE1-7. Cerebral Dysfunction “R/O a structural disorder due to stagnation/regression; comparison with 2012 MRI of the brain.2012 MRI reported as unremarkable.”

⁴⁴ JE11-11 and JE11-76.

⁴⁵ Neurologist did not testify. Neurologist’s affidavit was admitted as P5-(1-2).

⁴⁶ Mother testimony and P5-1.

⁴⁷ Mother testimony and JE7-3.

⁴⁸ Mother testimony and JE2-18.

⁴⁹ P5-1.

⁵⁰ Mother testimony and P5-1.

⁵¹ Mother testimony.

⁵² Mother testimony.

⁵³ Mother testimony.

⁵⁴ Mother and Principal testimony and P61-1.

⁵⁵ Mother testimony.

A-8. Student has no medical restrictions regarding transportation.⁵⁶

A-9. Student is universally described as happy, sweet, caring, and hard working. Student is easily overwhelmed in a school setting.⁵⁷ Student struggles and it is difficult for her to understand and respond to the world around her.⁵⁸ District staff genuinely liked and cared about Student. Student has a good relationship with her family.

A-11. The District uses a computerized program, EZ IEP to maintain Student's records regarding the development, finalization, and amendment of Student's IEPs.⁵⁹ The District has experienced problems with the use of this program, including user error, despite staff being trained in the program's use.⁶⁰ Date discrepancies in the paperwork generated by the EZ IEP program have been located.⁶¹ The Director admitted that the date on a goal could be incorrect, including looking like it was generated the year prior to the goal's actual development.⁶² The IEP from September 7, 2016, includes a sign in sheet for a 5th grade IEP meeting⁶³ and a sign in sheet (different signatures) from a sixth grade IEP.⁶⁴ Further, once the sign in sheets are completed, the program does not provide an opportunity to acknowledge individuals who arrive late to IEP meetings.⁶⁵

B. Evaluation History

B-1. On September 12, 2012, Student was evaluated by the [REDACTED] LLC.⁶⁶ This evaluation includes a neuroscience developmental learning profile based upon the neuropsychological evaluation.⁶⁷ The Neuropsychologist diagnosed Student with a Pervasive

⁵⁶ Mother testimony and P5-2.

⁵⁷ Psychologist 1 testimony.

⁵⁸ Mother Testimony.

⁵⁹ Director testimony.

⁶⁰ Director testimony.

⁶¹ Director testimony.

⁶² Director testimony.

⁶³ JE6-3.

⁶⁴ JE6-4.

⁶⁵ Director testimony.

⁶⁶ P1-1 and Mother testimony.

⁶⁷ P1-4.

Developmental Disorder-not otherwise Specified (“PDD-NOS”),⁶⁸ characterized by: a) attention disorder; b) dyspraxia and visual dyslexia; c) central auditory processing disorder and auditory dyslexia,⁶⁹ and d) generalized anxiety.⁷⁰ The evaluation recommended Student receive:

a. Speech/Language that includes goals in attention, memory, working memory, recall of sentences, receptive language, language content, concepts, following of directions, sentence structure, formulated sentences and word structure. A therapeutic listening program was recommended that may be very beneficial.

b. Learning disability/reading services for Student’s dyslexia using a program that is research-based and proven to be effective in teaching youngsters with dyslexia to become automatic readers (i.e. Wilson Reading Program).

c. Sensory integration occupational therapy for motor speed, motor tone, eye-motor dysfunction, difficulty crossing the midline, and global motor incoordination.

d. Social work - to help Student deal with and learn social nuances;

e. Regular consultation with an autism specialist.⁷¹

f. Pending Student’s responses, a therapeutic school may be necessary.⁷²

g. Development Program (“Communication Program”).⁷³

B-2. On December 14 and 16, 2015, the District completed Student’s tri-annual re-evaluation. Student was in the fourth grade.⁷⁴ Student’s academic performance in all areas was extremely low.⁷⁵

⁶⁸ PDD-NOS was described as a pervasive disorder that is not autism, Asperger disorder, disintegrative disorder or Rhett’s Syndrome (but shares similar “word reading” processing impairments with all who have pervasive disorders) because her symptoms are affecting all aspects of her functioning and are at impaired levels. P1-4.

⁶⁹ P1-6.

⁷⁰ P1-2, P1-6.

⁷¹ Student has never been diagnosed with autism.

⁷² P1-6.

⁷³ Program Supervisor testimony and JE2-10.

⁷⁴ JE2-1.

⁷⁵ JE2-9.

a. The District used the WISC-V, which was used to assess Student’s processing, reasoning, and problem solving abilities.⁷⁶ Student’s full scale IQ is numerically represented as 62, which is considered extremely low and falls at the 1st percentile.⁷⁷ Student’s fluid reasoning (which assesses an individual’s ability to solve novel problems without having to rely on language or previously learned information) fell just below the average range.⁷⁸ Throughout testing it was noted that Student was noticeably “fidgety.”⁷⁹ “Due to noticeable anxiety and impulsivity during testing, the results of this assessment are likely an underrepresentation of [Students] true cognitive and academic abilities.”⁸⁰

b. Student’s math skills fell in the late kindergarten/early first grade range.⁸¹ Student can count objects, identify missing numbers in order, write numerals, add using arrays and add single digits. Reversal of numbers was noted multiple times. With reminders, Student was able to count correctly.⁸² On the KTEA-3 Student had a standard score of 59 in concepts & applications, which was low, and a computation score of 52, which was in the very low range.⁸³

c. Student was given the Oral and Written Language Scales (OWLS II) to assess Student’s ability to understand and produce connected language.⁸⁴ The OWLS II consisted of two different scales: Listening Comprehension and Oral Expression.⁸⁵

i. The listening comprehension scale measured Student’s understanding of spoken language. Student earned a standard score of 67, which indicated a below average score in receptive language skills.⁸⁶

⁷⁶ JE2-10.

⁷⁷ JE2-10.

⁷⁸ JE2-10.

⁷⁹ JE2-10.

⁸⁰ Program Supervisor testimony and JE2-10.

⁸¹ JE2-9.

⁸² JE2-9.

⁸³ JE2-44.

⁸⁴ JE2-12.

⁸⁵ JE2-12.

⁸⁶ JE2-12.

ii. The oral expression scale measured Student's understanding and use of spoken language. Student displayed difficulty understanding the concepts of directionality, such as left or right. She was also observed to reverse numbers and letters during testing. "Student used grammatically correct sentence when answering and asking questions during testing."⁸⁷

iii. Student's reading functioning was comparable to a mid-year kindergarten student.⁸⁸ However, looking at individual scores, Student's expressive one-word picture vocabulary test score (which assesses ability to name, using one word, objects, actions, and concepts when presented with an illustration) was 98,⁸⁹ which represented a percentile rank of 45 and an age-equivalent of 9-8.⁹⁰ Student's written expression score on the KTEA-3 was 40,⁹¹ considered to be very low.⁹² This represents a 58 point discrepancy.⁹³ Overall, Student's reading letter and word recognition was assessed at a standard score of 48 and a percentile rank of less than .1 – very low; and a reading comprehension standard score of 54 and a percentile rank of .1 – very low.⁹⁴

d. Written expression proved to be the most challenging and Student was visibly overwhelmed. Student's overall writing ability is comparable to an early kindergarten student.⁹⁵ Student did not realize when she was supposed to use punctuation and had a hard time completing a sentence that was already started.⁹⁶

⁸⁷ JE2-12.

⁸⁸ JE2-9.

⁸⁹ Psychologist 2 testimony and JE2-12.

⁹⁰ Psychologist 2 testimony and JE2-12.

⁹¹ Psychologist testimony and JE2-44.

⁹² Psychologist 2 testimony and JE2-44.

⁹³ Psychologist 2 testimony.

⁹⁴ JE2-44

⁹⁵ JE2-8 and JE2-41.

⁹⁶ JE2-41.

e. Functional performance found that Student's placement in the Communication Program provided structure and support to help Student, that Student experienced only 4 incidents which required support, and the behavior intervention plan will be discontinued, although behavior would continue to be monitored.⁹⁷

f. The Cognitive Functioning report found Student to be in the extremely low range in verbal comprehension, visual spatial, processing speed, and full scale. Student scored in the very low range for fluid reasoning.⁹⁸

g. Communication status/speech language:⁹⁹

i. Receptive language skills indicated a below average score;

ii. Hearing or receptive vocabulary skills are slightly below average;

iii. Expressive vocabulary skills were within the average range;

iv. Oral motor/articulation skills were informally judged to be within normal limits;

v. Voice, fluency and rate of speech were informally judged to be within normal limits for Student's age and gender, but Student benefits from verbal cues to increase her volume when talking to teachers and peers;

vi. Pragmatic/language skills were informally assessed and judge to be within normal limits.

h. Hearing/vision assessment: Student's optometrist report dated 8/29/15 was reviewed and Student was found to have an astigmatism and myopia with a corrected visual acuity of 20/20 distance and 20/30 near. Student wears glasses. Further assessments for educational purposes determined that Student had difficulty in the areas of depth perception (stereopsis) and tracking. However, Student does not currently qualify for Vision Itinerant Services.¹⁰⁰

⁹⁷ JE2-10

⁹⁸ JE 2-11.

⁹⁹ JE2-12

¹⁰⁰ JE2-13.

i. Motor abilities: Student scored in the well below average range for fine motor precision, fine motor integration, fine manual control, manual dexterity, upper-limb coordination, manual coordination.¹⁰¹

j. Student's social emotional status was determined using the Behavior Assessment System for children (BASC), where the teacher and Mother ratings indicate that Student adaptive skills and externalizing domains were within normal range. One exception was the adaptive skills score for functional communication, which was in the at-risk range.¹⁰² The Multidimensional Anxiety Scale for Children (MASC) indicated that Student exhibited a very elevated anxiety disorder and a very elevated level of physical symptoms. "These elevated anxieties could be an impediment for [Student] when facing increased academic challenges in more rigorous educational settings."¹⁰³

k. Academic recommendations (not fully included):¹⁰⁴

i. Phonemic awareness skills may need to be explicitly taught as Student continued to struggle with these skills. Tasks such as blending, segmenting, rhyming, and matching words with the same initial/ending/middle sounds may be helpful.

ii. A multisensory curriculum such as Wilson or Orton-Gillingham is recommended.

iii. Use of auditory books through Learning Ally is encouraged to increase fluency and comprehension.

B-3. A series of evaluations was done at LB¹⁰⁵ between January 8, 2016 and July 7, 2017. These evaluations are given little evidentiary weight based on the credible testimony of Psychologist 1, who believed that LB "cherry picked" the subtests, some of which are old and not often used.¹⁰⁶ In

¹⁰¹ JE2-(15-16).

¹⁰² JE2-20.

¹⁰³ JE 2-20.

¹⁰⁴ JE2-43.

¹⁰⁵ Personally identifiable information is in Appendix A.

¹⁰⁶ Psychologist 1 testimony and P96-1.

Psychologist 1's opinion, this evaluation shows no growth or regression on the final evaluation date of July 7, 2017.¹⁰⁷ No witness from LB was present to testify.

B-4. On August 9, 2017, Parents had Student re-evaluated by the Neuropsychology Diagnostic Center LLC.¹⁰⁸ The Neuropsychology summary/diagnostic profile revealed that the comparison between Student's 2012 and 2017 evaluations showed globally decreased scores with stagnation/regression, especially regarding attention, IQ, academics and mood.¹⁰⁹ Chronic academic struggle was reported, with increasing school-related anxiety.¹¹⁰ It was recommended that Student continue in an IEP with a therapeutic school ("which was highly recommended due to the pervasive symptom complex, especially decreasing scores, stagnation/regression."¹¹¹). Specifically, the Lindamood-Bell learning process was recommended to assist with dyslexia.¹¹² No explanation was provided for this recommendation.

a. On the Wechsler Individual Achievement Test-Third Edition (WIAT III), the report specifies "Scores are significantly decreased from 2012 evaluation."¹¹³ Student's full scale IQ was reported at 61.¹¹⁴ Student's reading composite scores was 59, which is considerable impairment;¹¹⁵ the written expression score was 53, which is considerable impairment;¹¹⁶ decoding score was 64, which is significant impairment;¹¹⁷ pseudo word decoding was 64, which is significant impairment;¹¹⁸ and mathematics was 59 and math fluency 62, both in the considerable impairment range.¹¹⁹ Psychologist 2

¹⁰⁷ Psychologist 1 testimony and P96-1.

¹⁰⁸ P1-1 and Mother testimony.

¹⁰⁹ JE1-7.

¹¹⁰ JE1-8.

¹¹¹ JE1-8.

¹¹² JE1-7. This is in contrast to the 2012 evaluation, which recommended Wilson.

¹¹³ JE1-6.

¹¹⁴ Psychologist testimony and JE1-5.

¹¹⁵ Psychologist 2 and JE1-6.

¹¹⁶ Psychologist 2 and JE1-6.

¹¹⁷ Psychologist 2 and JE1-6.

¹¹⁸ Psychologist 2 and JE1-6.

¹¹⁹ Psychologist 2 and JE1-6.

noted a marked 73 point discrepancy between Student's oral word fluency score (122) and Sentence building score (49).¹²⁰ Psychologist 2 questioned the validity of this discrepancy.¹²¹

B-5. During December of 2018, the District completed Student's tri-annual re-evaluation. The re-evaluation was completed at CDS. The District conducted an eligibility meeting on December 12, 2018 to review the evaluations.¹²² Student was found eligible for special education services under the categories OHI and Speech Language. The emotional disability category was dropped because the team agreed the evaluation showed few signs of anxiety at either HMS or CDS.¹²³

a. A social development study was completed on November 14, 2018 and December 4, 2018.¹²⁴ Information collected from Parents revealed parental concerns about anxiety and social skill deficits.¹²⁵ Student interview found that "Student likes coming to school and she likes homework."¹²⁶ Student would like to participate in afterschool activities, but cannot because of transportation.¹²⁷ No one at CDS was interviewed.

b. An occupational therapy re-evaluation was completed on 12/7/2018.¹²⁸ This evaluation concluded that Student continued to demonstrate difficulty with both fine motor skills and visual skills. Student was demonstrating progress with her legibility when writing and a relative strength with object manipulation.¹²⁹ It was recommended that Student continue to receive occupational therapy

¹²⁰ Psychologist 2 and JE1-6. See paragraph 2 above, where a similar discrepancy was found in Student's 2015 District evaluation.

¹²¹ Psychologist 2 testimony.

¹²² JE11-1.

¹²³ Social Worker 2 testimony.

¹²⁴ Social Worker 2 and JE11-44.

¹²⁵ Social Worker 2 testimony.

¹²⁶ Social Worker 2 testimony and JE11-45.

¹²⁷ Social Worker 2 testimony and JE11-45.

¹²⁸ Occ. Therapist testimony and JE11-(49-51).

¹²⁹ JE11-51.

within the school setting and the utilization of technology for writing.¹³⁰ Student was chatty asking about classmates and teachers.¹³¹

c. Psychoeducational evaluation was completed by Psychologist 2 at CDS in 12/2018.

- i. At the time Psychologist 2 completed the evaluation he was unaware that some of the subtests used to assess Student had been given to her by CDS earlier in the year. Psychologist 2 admitted that a subtest should not be readministered for one year. Psychologist 2 alleged that he had requested assessments from CDS and they were not provided.¹³² No documentation of the request, by Psychologist 2 or anyone else associated with the District, was presented by the District. CDS Director denied receiving this request.¹³³ CDS did not voluntarily share the results of Student's assessments with the District. Psychologist 2 never spoke to anyone at CDS regarding Student's reading comprehension.¹³⁴
- ii. Psychologist 2 conducted a time-on-task assessment and Student's on task percentage was 100%.¹³⁵ There was no on-task study done at HMS, even though Psychologist 2 was aware that Student was medicated for attention difficulties.¹³⁶
- iii. Psychologist 2 was unable to determine Student's full scale IQ, indicating that there was a discrepancy between long term memory and visual processing.¹³⁷ Based on his testing, Psychologist 2 believes Student might have a cognitive impairment.¹³⁸ The IEP team determined that there was not an intellectual

¹³⁰ JE11-51.

¹³¹ Occ. Therapist testimony.

¹³² Psychologist 2 testimony.

¹³³ CDS Director testimony.

¹³⁴ Psychologist 2 testimony.

¹³⁵ Psychologist 2 testimony.

¹³⁶ Psychologist 2 testimony.

¹³⁷ Psychologist 2 testimony and JE11-56.

¹³⁸ Psychologist 2 testimony

disability because Student's rating scale of impairment (RSI) was within normal range.¹³⁹

iv. Psychologist 2 believes Student will never be able to compete academically as her same age peers. Student will always be in the first percentile.¹⁴⁰

d. The speech and language re-evaluation was completed on December 4, 2018. The stated purpose of the evaluation was to determine if Student's speech and language skills are developmentally appropriate and functional for academic achievement.¹⁴¹ Speech Pathologist evaluated and observed Student during a transition at CDS.¹⁴² Student presented with below average expressive and receptive language skills and continued to qualify for speech-language services.¹⁴³

C. Student's Educational History through August 2017

C-1. During the preschool years, Student attended Park District programs,¹⁴⁴ where it was noted that Student was having possible learning problems. The District screened Student but found the results to be in acceptable ranges for everything except motor skills.¹⁴⁵

C-2. During the 2011-12 school year, Student attended Kindergarten at the District's early childhood center and was evaluated for an IEP. "School data revealed significant learning difficulty with achievement, with language test scores ranging from 49 standard score to 92 standard score (note: average=90-109 standard score)."¹⁴⁶ Student began receiving special education services in kindergarten, receiving resource services, as well as social work, speech-language and occupational therapy support.¹⁴⁷

¹³⁹ Psychologist 2 testimony and JE11-(57-59).

¹⁴⁰ Psychologist 2 testimony.

¹⁴¹ JE11-67

¹⁴² Speech Pathologist testimony.

¹⁴³ Speech Pathologist testimony and JE11-71.

¹⁴⁴ Mother testimony and JE2-19.

¹⁴⁵ Mother Testimony.

¹⁴⁶ P1-1.

¹⁴⁷ HO1-b.

C-3. Student attended first and second grade at FES.¹⁴⁸ Student began receiving Wilson reading instruction during this time.¹⁴⁹

C-4. Student attended the District's elementary school, KES, for 3rd, 4th and 5th grade. Student was placed in the Communication Development Program ("CD Program").¹⁵⁰ The CD Program is provided by the ██████████ Cooperative and the program is located at KES. It is partially mainstreamed, although special ed minutes are high.¹⁵¹ It is a co-taught program by an LBS1 teacher and a speech language pathologist.¹⁵² The class has less than 10 students, 6 students average, and 5 paraprofessionals. It is a communication development program where social work can be pushed in or pulled out.¹⁵³

C-5. During the 2015-16 school year, Student was in the 4th grade in the CD Program. At the beginning of the school year, Student received instruction using the Wilson reading method for 45 minutes a day.¹⁵⁴

C-6. On December 16, 2015, a re-evaluation/IEP conference¹⁵⁵ was held to review Student's triannual re-evaluation. At this conference, Parents were assisted by an educational advisor.¹⁵⁶ The team found Student eligible for IEP services and agreed to collect data and reconvene in February of 2016.¹⁵⁷ The category of emotional disability was added to Student's IEP based upon Student displaying inappropriate types of behavior under normal circumstances and a general pervasive mood of anxiety,

¹⁴⁸ Personally identifiable information is in Appendix A.

¹⁴⁹ JE4-2.

¹⁵⁰ Director, Psychologist 1 and Program Supervisor-testimony and JE2-10.

¹⁵¹ Director testimony.

¹⁵² Director testimony.

¹⁵³ Director testimony.

¹⁵⁴ JE4-2.

¹⁵⁵ See section "evaluation" below for detailed information.

¹⁵⁶ Educational advisor did not testify.

¹⁵⁷ JE3-20.

unhappiness, and/or depression over an extended period of time and to a marked degree.¹⁵⁸ During this conference, the District offered proposed goals.¹⁵⁹ No IEP goals were finalized.

C-7. On February 28, 2016, an IEP meeting was held finalize Student's IEP and goals¹⁶⁰ and to review data and amend Student's IEP accordingly.¹⁶¹ The meeting began with Parent presenting concerns about Student's reading skill progress in the Wilson reading program and questioning the providers qualifications to teach Wilson, indicating that she was "trained" and not "certified."¹⁶² Further, Parent requested 1:1 reading support for 90 minutes per day using Lindamood Bell, and to allow Student to attend ESY programming at Lindamood Bell, enabling Student to "close the gap."¹⁶³ Psychologist 1 cautioned about changing the intervention without seeing if a change in intensity of the program would impact reading ability.¹⁶⁴ The District agreed to increase Student's 1:1 Wilson instruction to 90 minutes per day, to supervise the Wilson reading teacher, and to collect reading data using the Fountas and Pinnell progress monitor.¹⁶⁵ The proposed speech goal has a development date of December 1, 2014;¹⁶⁶ the occupational therapy goal is 12/3/2014;¹⁶⁷ the remaining goals have various dates in December 2015.¹⁶⁸ The record does not contain an explanation of these discrepancies. The team agreed to meet in 8 weeks.¹⁶⁹

C-8. During March/April 2016, the District sent SPED Teacher for Lindamood Bell training.¹⁷⁰ SPED Teacher attended a two-day workshop and is now trained in Lindamood Bell, Wilson, and PECS (picture communication system). The Lindamood Bell program includes reading comprehension, sounds are built into words, words into a sentence, sentence into a passage - it is a progression.¹⁷¹ As part of the

¹⁵⁸ JE2-5.

¹⁵⁹ Program Supervisor testimony.

¹⁶⁰ JE3-20.

¹⁶¹ JE3-20.

¹⁶² JE3-21.

¹⁶³ JE3-(20-21).

¹⁶⁴ Psychologist 1 testimony.

¹⁶⁵ JE3-21.

¹⁶⁶ JE3-11.

¹⁶⁷ JE3-12.

¹⁶⁸ JE3-(6,7,8,9)

¹⁶⁹ JE3-21.

¹⁷⁰ SPED Teacher testimony.

¹⁷¹ SPED Teacher testimony.

Lindamood Bell program, you are required to test to see if Student is retaining the information.¹⁷² SPED Teacher believed these tests were performed monthly. Edgenuity is a program administered in conjunction with the Lindamood Bell program.¹⁷³

C-9. On April 26, 2016, in IEP meeting was held. In addition to the required team members, a Wilson Specialist¹⁷⁴ was present by telephone.¹⁷⁵ The Wilson Specialist had observed Student.¹⁷⁶ The Wilson Specialist did not recommend Student changing reading programs, feeling that it was a risk.¹⁷⁷ She determined that Wilson was appropriate (if scaffolded) and using an appropriate assessment tool specific to skills taught in Wilson.¹⁷⁸ The Wilson Specialist felt that 90 minutes of individual instruction was optimal for reading instruction.¹⁷⁹ If there was a change in reading programs to Lindamood Bell, the Wilson Specialist recommended the verbalizing/visualizing and Seeing Stars program.¹⁸⁰ The team declined to fund Student for ESY at the Lindamood Bell summer program.¹⁸¹

C-10. Following the District's denial to fund ESY at Lindamood Bell, Parents filed a State complaint. The State found all IEPs were done procedurally correct and the District was not required to pay for the program.¹⁸²

C-11. On August 18, 2016, an IEP meeting was held in response to Parents' request for an emergency meeting.¹⁸³ School was not yet in session and the District did not have a full complement of staff, so a partial IEP team met to outline a plan for Student's fifth grade school year.¹⁸⁴ At this meeting,

¹⁷² SPED Teacher testimony.

¹⁷³ SPED Teacher testimony.

¹⁷⁴ Personally identifiable information is available on Appendix A. The Wilson Specialist did not testify at hearing.

¹⁷⁵ Mother testimony and JE4-2.

¹⁷⁶ Mother testimony.

¹⁷⁷ Mother testimony and JE4-2.

¹⁷⁸ JE4-2.

¹⁷⁹ JE4-2.

¹⁸⁰ JE4-2.

¹⁸¹ JE 4-2.

¹⁸² Mother testimony.

¹⁸³ Mother and Director testimony and JE5-1.

¹⁸⁴ Director testimony.

Parents reported that, after completing the summer program at Lindamood Bell, Student could now read, and was ready to return to classes at FES and not attend the CD Program at KES.¹⁸⁵ Parents requested 90 minutes of Lindamood Bell instruction per day, which could be broken into two 45 minute sessions, a pull out for math, and an aide in the general education classes (science, social studies, PE, art, music).¹⁸⁶ The District expressed concerns about Parents' requests, especially concerning the immediate placement outside of the CD program, noting most students transition out of the program.¹⁸⁷ The meeting concluded with Student remaining at KES, with support from the CD staff.¹⁸⁸ Student remained at KES with 90 minutes pullout per day of reading, 60 minutes pullout per day in math, 30 minutes social sci/science, 25 minutes PE, lunch/recess 40 minutes, 10 and 30 minutes writing, 30 minutes art/music, 45 minutes tech class and social work, and speech language and OT to be pull outs.¹⁸⁹ The IEP team agreed to this because the preference is to fade supports rather than remove them entirely.¹⁹⁰ It was anticipated that another IEP meeting would be needed at the start of the school year to possibly amend Student's goals and to determine Speech/language placement.¹⁹¹ This meeting became very adversarial due to the Educational advocates demands.¹⁹² Parent did not object to Student's placement.¹⁹³

C-12. On September 7, 2016¹⁹⁴an IEP meeting was held. This IEP contains several inconsistencies, including two sets of sign-in sheets (one specifying fifth grade¹⁹⁵and three specifying sixth grade).¹⁹⁶ The document reflects a program modification specifying: “[Student] is currently enrolled

¹⁸⁵ Mother testimony and JE5-3.

¹⁸⁶ Mother testimony and JE5-3.

¹⁸⁷ JE5-4.

¹⁸⁸ JE5-5.

¹⁸⁹ JE5-4.

¹⁹⁰ Program Supervisor testimony.

¹⁹¹ Je5-5.

¹⁹² Director testimony.

¹⁹³ Mother and Program Supervisor testimony.

¹⁹⁴ It is noted that there are procedural errors within this document. JE6-2 shows a conference date of 9/7/0216 with an IEP start date of 9/1/2017; JE6-3 shows that the Student is in the 5th grade (Student was in the 6th grade) and it is signed by different participants than pages JE6-1 or JE6-4. JE6-26 provides classes and programs for 9/01/17 to 9/1/2018. The document contains an IEP Note from September 1, 2017 and May 3, 2017. The District's explanation for these inconsistencies was insufficient.

¹⁹⁵ JE6-3.

¹⁹⁶ JE6-1, 6-2 and 6-4.

in a 5th grade general education classroom at KES. [Student] receives classes in the general education setting for the following subject areas with paraprofessional/inclusion assistance (PE, Science-Social Studies, Writing, Music, Art, and Library-Tech). [Student] receives intense core instruction in math, reading, and writing in the special education and CD Program.”¹⁹⁷ There is no placement page for Student’s 5th grade placement.¹⁹⁸ However, there is a placement page for Student’s classes and programs from 9/1/2017 – 9/1/2018 (the sixth grade year).¹⁹⁹ There are also general IEP Notes from September 1, 2017 and May 3 2017.²⁰⁰

a. Two Occupational therapy goals were developed at this meeting. Occ. Therapist²⁰¹ believed she was present at this IEP meeting and drafted Student’s goals,²⁰² but her signature was not on the sign-in sheet.²⁰³ Student received occupational therapy once per week for 30 minutes.²⁰⁴

i. The first is a handwriting goal to address Student’s inadequacy in writing (legibility errors). In assessing Student’s present level of performance, it was noted that she could copy all of her letters adequately when working with occupational therapy, but that this does not always transition to high demand activities like words and sentences.²⁰⁵ Student was to receive 30 minutes of occupational therapy to address this goal.²⁰⁶ This goal was not finalized until November of 2016 due to Occ.Therapist’s need to collect additional data.²⁰⁷

Occ. Therapist did not recall whether the finalization of this goal was discussed

¹⁹⁷ JE6-23.

¹⁹⁸ See JE6. SPED Teacher testimony.

¹⁹⁹ JE6-(26-27).

²⁰⁰ JE6-29. Director testified that these notes were entered on this IEP on September 1, 2017 by agreement of the attorneys. No further explanation was provided.

²⁰¹ Personally identifiable information is available on Appendix A.

²⁰² Occ. Therapist testimony.

²⁰³ JE6-3

²⁰⁴ JE6-26.

²⁰⁵ Occ. Therapist testimony and JE6-14.

²⁰⁶ JE6-14.

²⁰⁷ Occ. Therapist testimony and JE17-7.

with the Parents.²⁰⁸ At the end of the school year, June of 2017, only the first benchmark had been met.²⁰⁹ Occ. Therapist determined that Student made good progress on this goal.²¹⁰

ii. The second is an oculomotor skills goal.²¹¹ When this goal was developed, Student was able to fixate on a target for 10 seconds before losing focus.²¹² The goal was developed because Occ. Therapist was aware that Student was having visual tracking problems and she wanted to provide support in this area.²¹³ The goal provides that, by October 2017, Student will demonstrate improved tracking skills by reading 2 lines of text (letters/numbers/symbols) at near point from left to right with moderate cuing.²¹⁴ Student's end-of-school-year progress on the benchmarks for this goal were achieved or in progress.²¹⁵ Occ. Therapist testified that Student had difficulty because her eyes got tired and it was hard to maintain attention.

C-13. During the 2016-17 school year, the District provided Student with 90 minutes per day of reading instruction using Lindamood Bell.²¹⁶ Student was taught using Lindamood Bell Seeing Stars program.²¹⁷

C-14. On May 3, 2017, a middle school transition meeting was held at HMS.²¹⁸ During the transition meeting, Student's classes and programming for HMS were determined. Student was to have

²⁰⁸ Occ. Therapist testimony.

²⁰⁹ Occ. Therapist testimony and JE17-7.

²¹⁰ Occ Therapist testimony.

²¹¹ Occ. Therapist testimony and JE6-19. Occ. Therapist received additional training to address ocular motor skills.

²¹² JE6-19.

²¹³ Occ. Therapist testimony.

²¹⁴ JE6-19.

²¹⁵ JE17-(12-13).

²¹⁶ Program Supervisor and SPED Teacher testimony and JE5-4.

²¹⁷ JE7-6.

²¹⁸ JE9-25.

49 minutes of reading at first block, and instructional assistance in science, social studies and health.²¹⁹ Additionally, Student was to be provided with a one-to-one aide to assist with navigation of the new building.²²⁰ Mother confirmed the Parents' agreement to the reduction in reading minutes by email on May 8, 2017.²²¹ No changes were made to the goals or services at this meeting.²²²

D. Educational History: September 2017-current.

D-1. For school year 2017-18, Student attended District's HMS.²²³ There are about 600 students attending HMS.²²⁴ Student was provided with an aide to assist the navigation of the new school.²²⁵ Student found HMS noisy and wore noise cancelling headphones during transitions, gym and lunchroom.²²⁶ Student's social development is not in line with Student's peers; she was awkward in social situations, which resulted in social isolation.²²⁷

D-2. Student's math class was 45 minutes per day and consisted of eighteen students, ranging from 6th-8th grade, and one classroom aide.²²⁸

D-3. On September 1, 2017, An IEP meeting was convened by agreement of the parties for the purposes of notating that Parents had retained an attorney, who requested a delay in the IEP meeting to allow the opportunity to review Student's school records and provide an updated evaluation from Parents' private provider. No changes were made to the IEP on this date.²²⁹

²¹⁹ JE9-25.

²²⁰ Testimony of Mother.

²²¹ Mother testimony and R10-26.

²²² Case Manager testimony.

²²³ Personally identifiable information is located in Appendix A. Mother testimony.

²²⁴ Psychologist 2 testimony.

²²⁵ Mother and Principal testimony.

²²⁶ Mother testimony.

²²⁷ Mother, Case Manager, and Principal testimony.

²²⁸ Case Manager testimony and JE 7-23.

²²⁹ Director Testimony, JE6-29 and JE7-26.

D-4. On October 3, 2017, Student's annual IEP meeting was held.²³⁰ During this meeting, Student's annual goals were reviewed, a recent evaluation from Student's neuropsychologist was reviewed, and the District discussed Parents' concerns over Student not meeting her IEP goals despite significant involvement/intervention from the District. Parent's also discussed concerns about Student's lack of social interaction, and her isolation, due in part to her noise cancelling headphones.²³¹ Student's placement options were discussed, District's position was to allow Student to remain in the current placement with additional supports in general education classes. Principal wanted to ensure Student had a full-time aide in the general education science and social studies classes.²³² In accordance with the recommendation of the neuropsychologist, Parent requested Student be placed in a therapeutic school, and completed the releases to allow District to inquire about a potential placement in a therapeutic day school program.²³³ Ultimately, Parent rejected the therapeutic schools recommended by the District.²³⁴

a. Two Occupational therapy goals were developed at this meeting. Student received occupational therapy once per week for 30 minutes and was pulled out of class for these minutes.²³⁵

i. The first goal is a handwriting legibility goal, which was developed as a continuation of Student's previous handwriting goal (November, 2016), benchmark 3, which Student had not yet achieved.²³⁶ Occ. Therapist determined that Student made good progress on this goal based on Student's improved performance in spacing, correctly formed letters, use of cues for spelling, and signs of independence.²³⁷

²³⁰ JE7-1.

²³¹ Mother testimony.

²³² Principal testimony.

²³³ Mother testimony.

²³⁴ Mother testimony.

²³⁵ Occ. Therapist testimony and JE7-23.

²³⁶ Occ. Therapist testimony and JE6-14 and JE 7-11.

²³⁷ Occ Therapist testimony.

ii. The second goal is an oculomotor skills goal.²³⁸ This goal was also developed as a continuation of Student's previous goal and was made more difficult by adding amounts of letters, number and symbols Student would need to process.²³⁹

b. Social Worker²⁴⁰ was present and assisted with development of two social work goals.²⁴¹ Social Worker 1 recommended 30 minutes per week of social work in a group setting.²⁴² Direct social work minutes were not recommended because Student's difficulties were related to peer interaction.²⁴³ These goals addressed Student's difficulties in making friends, including expected and unexpected behaviors, zones of regulation, how to introduce yourself and emotional regulation (including anxiety).²⁴⁴ Student's June 6, 2018 progress report states that Student continues to work toward her goal of an introductory and two follow up exchanges with a peer outside of a social work setting.²⁴⁵ Student's second goal was not met due to lack of need for use of the skill provided by the goal.²⁴⁶

c. Psychologist 2²⁴⁷ was present and testified that He reviewed Neuropsychologist's assessment and was familiar with the testing.²⁴⁸ Student's testing revealed that she was considerably impaired in reading composition and written expression, and significantly impaired in decoding, pseudo word decoding. Psychologist 2 agreed with these findings but cautioned that these findings were based on percentile scores which are based on same-aged peers. Student is not progressing at the same rate as same-aged peers and needs to be assessed based on a rate for Student's cognitive ability.²⁴⁹

²³⁸ JE7-15.

²³⁹ Occ. Therapist testimony.

²⁴⁰ Personally identifiable information is in Appendix A.

²⁴¹ Social Worker 1 testimony and JE7-2, and JE7-10.

²⁴² Social Worker 1 testimony.

²⁴³ Social Worker 1 testimony.

²⁴⁴ Social Worker 1 testimony.

²⁴⁵ JE21-4.

²⁴⁶ JE-21-(4-5).

²⁴⁷ Personally identifiable information is in Appendix A.

²⁴⁸ Psychologist 2 testimony.

²⁴⁹ Psychologist 2 testimony and JE1-6.

d. Speech Pathologist was present and drafted Student's speech/language goal. When the goal was drafted, Speech Pathologist did not have any information on Student's present level of functional performance.²⁵⁰ The academic vocabulary goal²⁵¹ is the same goal drafted for Student's fifth grade IEP.²⁵² Student's progress report lists this goal as "in progress" on all benchmarks.²⁵³

D-5. Social Worker²⁵⁴ met with Student weekly for 30 minutes during Student's lunch period; this was a group session (5 students) which included general education students.²⁵⁵

D-6. An IEP conference was held on December 13, 2017. Mother did not recall the purpose of this meeting,²⁵⁶ however she did recall being concerned about Student's social interactions, especially during lunchroom.²⁵⁷ Social Worker 1 testified that the purpose of this meeting was to address parental concerns.²⁵⁸ Social Worker 1 advised that Student had met the first benchmark for the social work goal and offered to address Parents' concerns by arranging a special lunch group with Student's peers in a quieter location.²⁵⁹ Parent declined this offer.²⁶⁰ Case Manager suggested Student join Student Council and this offer was accepted.²⁶¹

D-7. On December 18, 2017, the Director requested that Student be given the Edgenuity Ready My Path test.²⁶² This test was given on December 21, 2017, and Student scored in the 5th percentile.²⁶³

²⁵⁰ Speech Pathologist testimony and JE7-13.

²⁵¹ JE7-13.

²⁵² JE6-17.

²⁵³ JE21-7.

²⁵⁴ Personally identifiable information is in Appendix A.

²⁵⁵ Social Worker 1 testimony.

²⁵⁶ Mother Testimony.

²⁵⁷ Mother testimony and JE8-4 and 59-1.

²⁵⁸ Social Worker 1 testimony.

²⁵⁹ Social Worker 1 testimony and JE8-4.

²⁶⁰ Social Worker 1 testimony.

²⁶¹ Case Manager testimony.

²⁶² Sped Teacher testimony and P63-1

²⁶³ Sped Teacher testimony and P64-1.

The SPED Teacher did not work with Student on this program and could not interpret the data.²⁶⁴ After taking the Reading Placement Exam, it was determined that Student was too low for the program.²⁶⁵

D-8. On January 8, 2018, Parents notified the District that they would be touring and considering a placement at CDS.²⁶⁶ The Director acknowledged this notification, offered to tour CDS with Parents, and provided the documents necessary to forward Student's records to CDS.²⁶⁷

D-9. On January 31, 2018, an IEP meeting was held. Director altered the date by hand.²⁶⁸ Director testified the purpose of this meeting was to discuss amending the Student's eligibility classification to include autism.²⁶⁹ No amendment was made.²⁷⁰

D-10. On June 6, 2018, Student's 4th quarter goal progress was issued:

a. Social work goals:

i. Student had achieved the first three benchmarks toward the first social work goal and was in progress for the fourth benchmark. Social Worker 1 testified that benchmark four was still in progress because Student preferred to talk to adults rather than peers.²⁷¹ Social Worker 1 acknowledged that Student could not produce an introductory and two follow up exchanges with peers at the conclusion of 6th grade.²⁷²

ii. Student had achieved the first three benchmarks toward the second social work goal and the fourth benchmark was still in progress due to insufficient data.²⁷³

²⁶⁴ Sped Teacher testimony.

²⁶⁵ P68-2.

²⁶⁶ Mother testimony and P-65.

²⁶⁷ Parent testimony and P 66-1.

²⁶⁸ Director testimony and JE9-1.

²⁶⁹ Director testimony.

²⁷⁰ Director testimony and JE9.

²⁷¹ Social Worker 1 testimony and JE 21-(3-4).

²⁷² Social Worker 1 testimony.

²⁷³ Social Worker 1 testimony and JE21-4.

Social Worker 1 testified that Student did not need to use her coping skills during this period so no progress toward the goal could be determined. Social Worker 1 testified that this shows growth.

b. Occupational therapy goals:

i. Handwriting goal. Student had achieved the first benchmark and was in progress for benchmark 2 and 3.²⁷⁴

ii. Ocular Motor skills goal: Student had achieved the first benchmark and was in progress for benchmark 2 and 3.²⁷⁵

D-11. On May 15, 2018, Parents notified the District that they intended to unilaterally place Student at CDS. Student joined the ESY program at CDS on June 15, 2018.²⁷⁶

E. Student's Reading Goal History

E-1. Student's third grade IEP presented one reading goal, developed on December 12, 2014. This goal provided that "[b]y December 2015, [Student] will make progress in reading fluency and understanding."²⁷⁷

a. Student's progress report on February 20, 2015 provided that Student has been using the leveled reading program, Reading A-Z. She is currently reading at a level D. This is a first-grade level.²⁷⁸

b. The June 1, 2015 progress report states: "Student is currently reading at a level E. This is a first-grade level."²⁷⁹

²⁷⁴ Occ. Therapist testimony and JE21-5.

²⁷⁵ Occ. Therapist testimony and JE 21-(8-9)

²⁷⁶ Mother testimony.

²⁷⁷ JE2-26.

²⁷⁸ JE2-26.

²⁷⁹ Je2-26.

c. The 3rd benchmark for the reading goal provided that Student would read the first 100 words from the Dr. Fry word list in $\frac{3}{4}$ trials for three consecutive sessions.²⁸⁰

i. Student's progress reports indicate inconsistencies in Student's performance on this benchmark: 1) January 2015, Student could identify 30 of the 50 Dr. Fry words introduced; 2) May 2015, Student was successful in identifying 14 out of the 22 Dr. Fry words introduced; and 3) October 2015, Student could read 15 words from the Fry list.²⁸¹

d. Similar regression is shown on Benchmark 2, which requires Student to independently read a 7 word sentence fluently with 90% accuracy.²⁸² Student's progress report for this goal reports that in May 2015, Student was successful in reading sentences with at least 7 words with 90% accuracy in 3 out of 5 trials, however in October of 2015, Student could only read a 3-4 word sentence made up of words she knows with 50% accuracy.²⁸³

E-2. Student's 4th grade IEP has one reading goal which was developed on December 10, 2015,²⁸⁴ although it is not clear whether the goal was approved on this date or on the next IEP meeting date of February 2, 2016.

a. The present level of academic achievement for this goal states: "[Student] knows all 26 letters and their sounds both receptively and expressively. ["Student] knows 45 words off the Fry first 100 list. [Student] has difficulty decoding new words. [Student] continued to work with the Wilson reading program and is making great progress with this program."²⁸⁵ The notes from the 2/18/16 meeting specify Mother expressed concern for Student's reading and requested 1:1 reading support for 90 minutes per

²⁸⁰ JE2-27.

²⁸¹ JE2-27.

²⁸² JE2-27.

²⁸³ JE2-27.

²⁸⁴ JE3-6. The date of development is prior to the December 16, 2015 conference to review the triennial evaluation. See FOF B2 above.

²⁸⁵ JE3-6.

day, and feels Student is not making progress using Wilson and requested Lindamood Bell for ESY programming.²⁸⁶

b. Student's goal was to increase her vocabulary by learning 50 new sight words from the Fry first 100 list with 75% accuracy and no more than 6 phonemic cues.²⁸⁷ Benchmark 1- learning 50 new sight words with 20% accuracy and no more than 10 phonemic cues - was achieved in May 2016.²⁸⁸ Student's progress on Benchmark 2, learning 50 new sight words with 40% accuracy and no more than 8 phonemic cues, is shown as being at 44% accuracy.²⁸⁹

c. As of May 2016, Student's progress report indicated Student had achieved benchmark 1, and had achieved benchmark 2 with 44% accuracy. Benchmark 3 was not yet introduced.²⁹⁰

d. The team agreed to increase Student's Wilson individual instruction to 90 minutes per day.²⁹¹

i. Between December 17, 2015 and May 20, 2016, Student was Aimsweb progress monitored, at grade 2, based on a survey which determined Student's instructional reading level was grade 2.²⁹² Tracking took place every 2 weeks based on words read correctly/errors.²⁹³ The Goal Statement specifies "the rate of improvement should be 3.09 words read correct per week. The current average rate of improvement is 0.32 words read correct per week."²⁹⁴ Psychologist 1 believed that Student did make progress within her cognitive ability, but not as much as predicted.²⁹⁵

²⁸⁶ JE3-20.

²⁸⁷ JE3-6.

²⁸⁸ JE13-1.

²⁸⁹ JE13-1.

²⁹⁰ JE13-1.

²⁹¹ JE3-21. See results of evaluation FOF B-2-b-iii, finding Student's reading ability comparable to a mid-year kindergarten student.

²⁹² Psychologist 1 testimony and P23-1.

²⁹³ Psychologist 1 testimony and P23-2.

²⁹⁴ P23-2/

²⁹⁵ Psychologist 1 testimony based on Student's Neuropsychologist finding of an IQ of 61.

E-3. Beginning on June 10, 2016 Student began a private reading program at LB.²⁹⁶ During the summer session 2016, Student attended LB for 10 weeks, 5 days a week, for 4 hours a day.²⁹⁷ Student attended in person classes and took online classes from home to eliminate travel.²⁹⁸ Following the summer program, Student continued to take additional reading instruction at LB, both in person and online through the end of July 2017.²⁹⁹

E-4. Student's 5th grade IEP reading goal contains inconsistencies as to date.³⁰⁰ The goal appears to have been developed on September 6, 2016, which was after Student's intensive Lindamood Bell summer program. Student's present level of performance specified that Student can identify 30 (specified on the document) sounds and symbols and can identify and read CVC words with minimal errors or reversals. Student continued to build sight words on a daily basis and Student's word attach skills are strong and improving daily."³⁰¹ Further, Student's present level of performance was updated as of November 3, 2016 to specify that Student has learned 92 sight words out of the first 170 words from the team identified word list (Star Word List/Seeing Starts Program).³⁰² The IEP team that developed this goal included the Program Supervisor, SPED Teacher, and Educational Advocate.³⁰³ The District team members were frustrated by the advocates demands for changes to Student's IEP goals, but ultimately the team agreed on the goal.³⁰⁴ Student's sole reading goal provided that "[b]y November of 2017, Student will increase her vocabulary by mastering 350 new sight words from the team identified word list."³⁰⁵

a. Student was Aimsweb progress monitored in reading between September 14, 2016 and May 24, 2017. Student was monitored at the kindergarten level.³⁰⁶ The Goal statement provides: "The

²⁹⁶ Personally identifiable information is in Appendix 1.

²⁹⁷ Mother testimony.

²⁹⁸ Mother testimony.

²⁹⁹ Mother testimony and P95-(10-13).

³⁰⁰ JE6-8. Program Supervisor testified date of November 3, 2016 appearing in the goal was a typographical error.

³⁰¹ JE6-8.

³⁰² JE6-8.

³⁰³ SPED Teacher testimony and JE6-3.

³⁰⁴ SPED Teacher testimony.

³⁰⁵ JE6-8.

³⁰⁶ P24-1.

Rate of Improvement should be 0.64 words read correct per week. The current average rate of improvement is 0.32 words read correct per week.³⁰⁷ Psychologist 1 determined that, based on the rate of improvement, considering Student as a learner, there is progress.³⁰⁸

b. On September 19, 2016, Student was assessed using Fountas & Pinnell (A-Z) Benchmark assessment system.³⁰⁹ Student's benchmark independent level is listed as "B", which is a preprimer level.³¹⁰

c. The June 6, 2017 progress report found that Student had mastered the first and second hundred sight words on the Star Word List.³¹¹ The progress report shows that, as of March 17, 2017, Student has captured 45 of the 100 words of Star Words (Star Words List 201-300), and Student knows 245 of the first 300 Star Words.³¹² As of May 17, 2017, Student was reported to have mastered 43 of the 100 words of the 300 Star Word list.³¹³ The progress report indicates Student achieved the first three benchmarks for this goal, and has mastered [emphasis added] 245 of the 300 Star Words.³¹⁴ This was characterized by the SPED Teacher as "slow and steady progress."

E-5. The IEP team met on October 3, 2017. The SPED Teacher helped develop Student's 6th grade reading goal.³¹⁵ The present level of performance indicates Student is working with the reading intervention Seeing Stars, which Student is familiar with. A survey of skills at the beginning of the year indicated Student is 100% proficient in her basic vowel and consonant sounds. "Student knows 91 of the first 100 Seeing Star Words and 68 of the second 100 Seeing Star Words, for a total of 159."³¹⁶ SPED

³⁰⁷ P24-2

³⁰⁸ Psychologist 1 testimony.

³⁰⁹ Program Supervisor testimony and P25-8.

³¹⁰ P25 2-8

³¹¹ JE17-2.

³¹² JE17-2.

³¹³ JE17-2.

³¹⁴ SPED Teacher testimony.

³¹⁵ SPED Teacher testimony.

³¹⁶ JE7-6.

Teacher explained this as summer regression, however, Student attended the Lindamood Bell summer program during the summer of 2017.³¹⁷

A. Student's October 3, 2017 IEP Reading Goal provided that "[b]y November 2018 Student will increase her vocabulary by mastering 350 new sight words from the team identified word list. Mastery indicates that student can recognize the word automatically without prompting 5 consecutive times over multiple sessions."³¹⁸ Student's October 27, 2017 progress report states that Student knows 91 of the first 100 Seeing Star Words and 68 of the second one hundred.³¹⁹

B. On December 13, 2017, the team held an IEP meeting at the request of the Parents³²⁰ to discuss Student's educational progress in reading and the possibility of adding another goal aside from the sight words.³²¹ Parent's advocate was not present at this meeting.³²² Parent also expressed concerns that Student was not receiving individualized instruction and was in a class with 3 other students.³²³ SPED Teacher³²⁴ provided an update on Student's progress, advising that Student could identify 90 of the first 100 Seeing Star sight words and can identify 97 of the second 100.³²⁵ No mention was made of the third 100 Seeing Star sight words. The parties agreed that Student would be monitored using AIMSWEB and easy CBM.³²⁶ No additional goals were developed and no goals were amended.³²⁷

C. Student's progress report of 6/6/2018 advised that Student has achieved the first 100 team identified word list, the second 200 team identified word list, and can identify 94 of the additional 300 team identified word list.³²⁸ During school year 2017-2018, Student had a net increase of 49 new

³¹⁷ Mother testimony and P 96-1.

³¹⁸ JE7-6.

³¹⁹ JE19-1.

³²⁰ Mother testimony and P58-1.

³²¹ Mother testimony and JE8-4.

³²² Mother testimony and JE8-(1-2).

³²³ Mother testimony and P59-1.

³²⁴ SPED Teacher arrived late to the meeting and did not sign into the IEP team. SPED Testimony.

³²⁵ SPED Teacher testimony and JE8-4.

³²⁶ JE8-4.

³²⁷ Mother testimony and JE8.

³²⁸ JE21-1.

words mastered to the end of the school year in 2017.³²⁹ SPED Teacher determined this was appropriate and again shows the slow and steady progress in which this Student learns.³³⁰

E-6. Student entered CDS for the summer program in 2018. Initial assessments revealed that Student was unable to identify all alphabet letters and did not have core phonological awareness skills or decoding skills. CDS Director saw no evidence that Student was exposed to a multisensory instruction program.³³¹

A. Prior to an IEP meeting held September 28, 2018 at CDS, Student's reading levels were assessed using the Orton Gillingham Beginning reading skills assessment,³³² the Wade,³³³ Woodcock Reading Mastery Test III Form B,³³⁴ and Fountas and Pinnell.³³⁵ CDS Director³³⁶ concluded that Student had significant areas of need in all areas of reading and saw no evidence that Student was exposed to multisensory instruction.

- i. During the summer of 2018, Student was assessed using the Fountas & Pinnell (A-Z) benchmark assessment and it was determined that Student was reading at Level "D" with 73% accuracy. This is a kindergarten level.³³⁷
- ii. In the fall of 2018, Student was assessed at F & P level "E" with 79% decoding accuracy.³³⁸

B. Student's September 28, 2018 IEP provided three reading goals, one of which was similar to the reading goal previously provided by the District, specified as: "to increase her sight word

³²⁹ SPED Teacher testimony.

³³⁰ SPED Teacher testimony.

³³¹ CDS Director testimony.

³³² CDS Director and P34-4

³³³ CDS Director explained that Wade is the assessment used with the Wilson teaching method. CDS Director testimony and P34-5.

³³⁴ CDS Director Testimony and #4-(5-6)

³³⁵ P34-6,

³³⁶ CDS Director was certified as an expert in the interpretation and analysis of test data.

³³⁷ P34-6. It was noted that Student's F & P level in June 2016 was "E".

³³⁸ JE34-7.

vocabulary by reading 30 new high frequency/sign words accurately at least 4 out of 5 attempts by September 2019.”³³⁹ Student’s progress report from January 2019 shows Student was currently reading 162 words from the Fry sight word list (list 2) and by April 2019, Student’s progress shows Student is reading 246 words from the Fry signs word list (list 3).³⁴⁰

C. In addition to the reading sight words goal, Student was provided with a reading comprehension goal,³⁴¹ a reading decoding goal,³⁴² an encoding goal,³⁴³ and a written expression goal.³⁴⁴

F. Student’s Math Goal History

F-1. On December 12, 2014, Student’s third grade IEP presented one math goal:³⁴⁵ [Student] will make progress towards developing number sense and will be able to perform standard numerical operations.³⁴⁶

a. Student’s first benchmark, which is shown as achieved, provided that Student will receptively identify and expressively label numbers 1-100 in 3 out of 4 trials for three consecutive sessions.³⁴⁷

b. Benchmark 2 provided: [Student] will independently solve addition problems with addends within 10 when given visual and manipulative supports in 4/5 opportunities.³⁴⁸ In January 2015, Student was using the Touch Math program to solve addition problems to 10, with 72% accuracy, and in October of 2015, Student was using Touch Math to solve addition problems with 55% accuracy.

³³⁹ CDS Director testimony and P34-22.

³⁴⁰ P48-12.

³⁴¹ CDS Director testimony and P34-25, P48-14.

³⁴² CDS Director testimony and P34-27, P48-16.

³⁴³ CDS Director testimony and P34-29, P48-18.

³⁴⁴ CDS Director testimony and P34-32, P48-20.

³⁴⁵ JE2-27.

³⁴⁶ JE2-26.

³⁴⁷ KE2-28.

³⁴⁸ JE2-28.

c. Benchmark 3 provided: [Student] will solve single-digit subtraction problems when given a visual and manipulative support in 4/5 opportunities.³⁴⁹ By October of 2015, Student's progress report shows [Student] has been using the Touch Math Program to solve subtraction problems to 10. She is currently doing so with 30% accuracy.³⁵⁰

d. Benchmark 4 provided: given a 1-sentence single-digit addition or subtraction problem read aloud, [Student] will highlight the key information within the problem (addends, minuend, subtrahend, operation key word, and label write a numerical expression) and solve the problem in 4 out of 5 math problems. As of October 2015, this benchmark was not yet targeted.

F-2. The December 16, 2015 fourth grade IEP developed one math goal. It reported that Student's present level of performance as: [Student] has made progress with math skills. She has been working on addition using manipulatives. Student requires prompting when counting 1:1 correspondence. She has difficulty pointing to the object and counting correctly.³⁵¹ The goal developed required, by December 2016, that when presented with a visual representation of a number sentence or math problem, Student will read the problem, identify the operation needed to solve the problem and use manipulative, the number line or a calculator to solve the problem with 70% accuracy of 4/5 opportunities.³⁵²

a. Benchmark 1 provided: when presented with a visual representation of a math problem, Student will read the problem, identify the operation needed to solve the problem and use the number line or a calculator to solve the problem with 20% accuracy for 4/5 opportunities.³⁵³ This goal is shown as Achieved in May 2016.³⁵⁴

³⁴⁹ JE 2-28.

³⁵⁰ JE2-28.

³⁵¹ JE3-7.

³⁵² JE3-7.

³⁵³ JE3-7.

³⁵⁴ JE13-2.

b. Benchmark 2 was exactly the same as benchmark 1, except the accuracy was raised to 40%.³⁵⁵ Student's progress report in May 2016 provided that, when a word problem is read to her, [Student] is able to identify the operation needed and solve the problem with 25% accuracy.

c. Student was Aimsweb progress monitored in math between December 17, 2015 and May 27, 2016.

i. Student was monitored at grade 1 for math computation.³⁵⁶ The goal statement specifies the rate of improvement should be 0.76 points per week. The current average rate of improvement is 0.36 points per week."³⁵⁷ Psychologist 1 believed that Student did make progress within her cognitive ability.³⁵⁸

ii. From March 7, 2016 to March 27, 2016, Student was Aimsweb monitored in mathematics concepts and applications at the third grade level.³⁵⁹ The goal statement provided that Student will achieve 11 points from grade 3 mathematics concepts and applications. The rate of improvement should be .27 points per week. The current average rate of improvement is .32 points per week.³⁶⁰ Psychologist 1 testified this data shows improvement over time commensurate with Student's performance as a learner.³⁶¹

F-3. The September 7, 2016 5th grade IEP states Student's present level of performance: As of 11/1/2016, [Student] is currently working on the series Connecting Math Concepts. When pre-tested for the Level A Book, Student answered all 11 questions correct. When pre-tested for Level B, Student mastered all single digit additional questions. However, she did not accurately answer single digit

³⁵⁵ JE3-7.

³⁵⁶ P23-3.

³⁵⁷ P23-4.

³⁵⁸ Psychologist 1 testimony based on Student's Neuropsychologist finding of an IQ of 61.

³⁵⁹ P23-5.

³⁶⁰ P23-6 and Psychologist 1

³⁶¹ Psychologist 1 testimony.

subtraction or double digit addition. Therefore she begins this program at Level B. On Student's prior assessments, Student accurately identified +/- symbol with 100% accuracy, solved addition problems with 90% accuracy, and solved subtraction problems with 70% accuracy.³⁶² On November 2017 Student's single math goal was: when presented with a visual representation of a number sentence or math problem, Student will identify the operation needed to solve the problem with 100% accuracy and use manipulative or a number line to solve the problem with 85% accuracy.³⁶³

a. Student was Aimsweb progress monitored between September 14, 2016 and May 24, 2017.

i. Student's math concepts and applications were monitored at the second grade level.³⁶⁴ The Goal statement shows rate of improvement should be 0.33 points per week. The current average rate of improvement is 0.18 points per week.³⁶⁵

ii. Student's math computation was monitored at the second grade level.³⁶⁶ The Goal statement shows rate of improvement should be 0.97 points per week. The current average rate of improvement is 0.70 points per week.³⁶⁷ Psychologist 1 testified that this was closer to Student's expected performance and that the trend was "nice."³⁶⁸

F-4. On October 13, 2017, Student's sixth grade math goals were developed. Case Manager 1,³⁶⁹ who taught Student math in the special education classroom, was present. Case Manager 1 assisted the team in the development of Student's Math goals.³⁷⁰ Case Manager 1 testified that, prior to writing

³⁶² JE6-10.

³⁶³ JE6-10. Case Manager testified that she changed this goal slightly to account for the date discrepancy on the document, which reads 11/2/2016.

³⁶⁴ P24-3.

³⁶⁵ P24-4.

³⁶⁶ P24-5.

³⁶⁷ Psychologist 1 testimony and P24-6.

³⁶⁸ Psychologist 1 testimony.

³⁶⁹ Personally identifiable information is in Appendix A.

³⁷⁰ Case Manager testimony and JE7-7.

this math goal, she had reviewed Student’s Easy CBM,³⁷¹ Aimsweb,³⁷² Map scores (1st %tile),³⁷³ and WIAT III data.³⁷⁴ The goal was drafted as a two-step goal, identifying the operation and solving the problem (computation).³⁷⁵ Case Manager believed this goal was ambitious for the Student.³⁷⁶ The goal specified: “By November of 2018, when presented with a one-step word problem, [Student] will identify the operation needed to solve the problem with 100% accuracy and use manipulatives or a number line to solve the problem with 85% accuracy.”³⁷⁷ Case Manager 1 reviewed the goal during the hearing and admitted that the goal does not specify what type of math problem this goal was intended to address.³⁷⁸

a. Student enjoyed math facts and memorization and always gave her best effort.³⁷⁹ The 6th grade class consisted of 18 students, ranging from 6th-8th grade, with one classroom aide.³⁸⁰

b. To assess the Student’s learning levels in math, Student was tested using the My Path³⁸¹ online testing. Student was placed on path “A”, which is the third grade level.³⁸² Case Manager 1 was unaware that, during the prior school year, Student had been working at the first grade level in math.³⁸³ Case Manager 1 taught Student using this program and the skills being taught in this program to attempt to meet Student’s IEP goal. She also provided individual and small group assistance.³⁸⁴ Progress monitoring indicated Student’s math skills were declining.³⁸⁵

³⁷¹ R3-1. Case Manager testimony. It is noted that Progress monitoring using EasyCBM does not appear to begin until mid-October 2017.

³⁷² Case Manager and P24-3 (Student monitored at 2nd grade).

³⁷³ Case Manager testimony and JE7-3.

³⁷⁴ Case Manager testimony and JE1-6.

³⁷⁵ Case Manager testimony and JE7-7.

³⁷⁶ Case Manager testimony.

³⁷⁷ JE7-7.

³⁷⁸ Case Manager testimony.

³⁷⁹ Case Manager testimony.

³⁸⁰ Case Manager testimony.

³⁸¹ My Path was described as an Edgenuity product providing online interventions. The lowest instruction level for this product is 3rd grade. Case Manager testimony.

³⁸² Case Manager testimony and P78-6.

³⁸³ Case Manager testimony.

³⁸⁴ Case Manager testimony and JE7-7.

³⁸⁵ P78-8.

c. On December 13, 2017, there was an IEP meeting to address Parent concerns that progress was not significant enough. Psychologist 2 was present. The IEP team reviewed Student's Edgenuity progress monitoring, which revealed Student was receiving foundational math A, a program that begins at the 3rd grade math level.³⁸⁶ Case Manager reported that Student was working, in a small group and one-on-one, on identification and matching of clue words for operations. Student still struggled to write and decipher numbers and to know when to apply correct numerical understanding to the situation.³⁸⁷

d. In February 2018, Case Manager 1 stopped using the My Path program for Student,³⁸⁸ and requested that the District contract to use the Path Blazers³⁸⁹ program; the District did obtain a single user license for this program.³⁹⁰ Using the Path Blazers assessment, Student's math skills were placed at the first grade level.³⁹¹ Although Case Manager 1 believes that Student's goals were modified to reflect this change,³⁹² no evidence was presented that Student's math IEP goal was amended at this time.

e. Progress monitoring in math shows an uptick in Student's scores after the Path Blazer program was initiated.³⁹³

f. Student's June 6, 2018 progress report for the math goal verifies that during the 3rd quarter Student has continued to work with the online program Path Blazers.³⁹⁴ The progress report states that Student continues to have trouble identifying which operation is correct to solve problems and can recognize the key words, but mastery has not been achieved. Student can do well and then will forget

³⁸⁶ Psychologist 2 testimony and P78-6

³⁸⁷ Case Manager testimony and JE8-4.

³⁸⁸ Case Manager testimony.

³⁸⁹ Path Blazers was described as an Edgenuity product providing online interventions below the third grade level. Case Manager testimony.

³⁹⁰ Case Manager testimony and P67-1.

³⁹¹ Case Manager testimony.

³⁹² Case Manager testimony.

³⁹³ Case Manager testimony and R2-1.

³⁹⁴ JE21-2.

concepts.³⁹⁵ Case Manager believes that the easy CBM data, Map data and her observations evidence that Student was making slow and steady progress based on Student's ability.³⁹⁶

G. ESY and 2018-19 at CDS

G-1. Student's Neurologist, in her clinical judgment, believes that a more intensive, specialized educational setting such as CDS is appropriate for Student.³⁹⁷

G-2. Parents provided notice of the intent to unilaterally place Student at CDS within the requirements of the law.³⁹⁸

G-3. CDS is an Illinois State Board of Education approved therapeutic day school. CDS is not approved to serve students with intellectual disabilities.³⁹⁹ Student has never been determined to have an intellectual disability as a basis for Student's IEP.⁴⁰⁰

G-4. CDS has a junior high, which provides a full-day program during the school year and a part-day program during the summer (offerings are teacher availability dependent). A typical class consists of 8-10 students, with a minimum of two adults (certified special ed teacher and a certified assistant, supplemented by additional teacher assistants as necessary). Students work in small groups, and the typical student-teacher ratio is 4-1. CDS uses an integrated approach to teaching, with considerable collaboration. The educational staff is divided into teams consisting of a teacher, speech/language pathologist and a social worker. CDS concentrates in multisensory instruction, recognizing that students learn through their senses. CDS teachers are trained in Orton Gillingham and understand how language effects learning. CDS has five reading specialists; four are certified in Wilson. There are 7 speech/language pathologists. CDS uses an executive functioning program developed at Rush University.

³⁹⁵ JE21-2.

³⁹⁶ Case Manager testimony.

³⁹⁷ P5-2.

³⁹⁸ The sufficiency of the unilateral placement notice was not challenged by the District. +

³⁹⁹ CDS Director.

⁴⁰⁰ JE 2,3,4,5,6,7,8,11.

To address student's social/emotional needs, CDS employs social workers and provides social skills groups to work on social and emotional growth.⁴⁰¹

G-5. Prior to the unilateral placement at CDS, Student was invited to spend the day. Following this visit, CDS determined that Student was a good match for the CDS program.⁴⁰²

G-6. CDS completed assessments of Student prior to her enrollment.⁴⁰³ It was determined that Student had significant areas of need in all areas of reading. Student could not identify sight words and had difficulty recalling the entire alphabet.⁴⁰⁴ Student had a reading comprehension deficit and lacked decoding and encoding skills.⁴⁰⁵ CDS Director was surprised to learn that Student did participate in a multisensory instructional reading program and saw no evidence that Student had participated in 647 hours of private Lindamood Bell instruction over and above district instruction.⁴⁰⁶ Student's written expression skills were severely inadequate; Student could not write a sentence.⁴⁰⁷ Student's math skills were at a first grade level.⁴⁰⁸

G-7. At CDS, Student receives 30 minutes of reading instruction with a certified Wilson reading instructor, five days per week. Student receives speech language not just in individual assistance, but which is pushed into math, reading, and science to support Student's speech language needs by giving cues to support instruction. Student is provided with assistive technology (including noise cancelling headphones), occupational therapy support (both direct and push in), social work in a small group once a week and classroom group once a week. Social workers and occupational therapists are present at lunch and recess to assist students.⁴⁰⁹

⁴⁰¹ CDS Director testimony.

⁴⁰² Mother and CDS Director testimony. P-82.

⁴⁰³ CDS Director testimony.

⁴⁰⁴ CDS Director testimony.

⁴⁰⁵ CDS Director testimony and P34 (27-31).

⁴⁰⁶ CDS Director testimony.

⁴⁰⁷ CDS Director testimony and P34-8.

⁴⁰⁸ CDS Director testimony and P34-9.

⁴⁰⁹ CDS Director testimony.

G-8. There are no opportunities for Student to participate with general education peers.⁴¹⁰ Student does not participate in extracurricular activities due to transportation requirements.⁴¹¹ Student does participate in student council and the school play.⁴¹² Student has made friends at CDS⁴¹³ and has participated in parentally organized group activities with peers from CDS.⁴¹⁴

G-9. Student's CDS September IEP⁴¹⁵ provides thirteen (13) goals for Student: Four (4) in the area of reading; two (2) goals in math; three (3) speech language goals; an encoding goal; a written expression goal; a social communication goal; a social work goal; and an occupational therapy goal. These goals are worked on throughout the day as the team collaboratively pushes in the services in all classes.⁴¹⁶

G-10. Student has made substantial academic progress in reading and has achieved her annual benchmark goal, as measured by Fountas & Pinnell, as of the date of hearing.⁴¹⁷ Student is currently reading at a first-grade level.⁴¹⁸ CDS Director testified Student is on target to make one year's reading progress in one year.⁴¹⁹

G-11. Starting in December 2018, Student is no longer taking medication to control anxiety or attention deficit issues.⁴²⁰ Mother attributes this progress to smaller class sizes and individualized attention.⁴²¹

⁴¹⁰ CDS Director testimony.

⁴¹¹ Mother testimony. Student must be picked up at a certain time so Mother can return home to assist other children.

⁴¹² Mother and CDS director testimony.

⁴¹³ Mother and CDS director testimony.

⁴¹⁴ Mother testimony.

⁴¹⁵ P34-(11-39).

⁴¹⁶ CDS Director testimony.

⁴¹⁷ Mother testimony and P-39.

⁴¹⁸ Mother and CDS Director testimony and P-39.

⁴¹⁹ CDS Director testimony.

⁴²⁰ Mother testimony.

⁴²¹ Mother testimony.

G-12. In CDS Director’s opinion, Student’s current academic levels would require Student to remain in a special education classroom for reading and mathematics and would prevent her from accessing a general education classroom for social studies and science unless there were significant curriculum modifications and adult assistance.⁴²²

G-13. Mother believes Student would be a “social pariah” if she returned to District schools.⁴²³ CDS Director believed that Student would not have the language skills to interact with typically developing peers and, due to her premature outside interests, would have difficulty.⁴²⁴

G-14. On October 2, 2018, a Domain meeting was held to arrange for Student’s triennial re-evaluation. At this domain meeting it was determined that Student’s least restrictive environment continued to be a general education classroom, with modifications and/or supplementary aids and services, and classes in a special education setting for reading and math services.⁴²⁵ Social Worker 2 agreed with this placement, based on Student’s need to practice skills and interact outside a therapeutic setting.⁴²⁶

G-15. CDS Director determined that in her opinion, CDS meets the academic and emotional needs of the Student and that Student should remain at CDS for the remainder of the current school year, participate in ESY, and remain for the 8th grade year.⁴²⁷

G-16. CDS has the available staff to provide educational services for Student after school following ESY during the summer of 2019.⁴²⁸

H. Transportation

⁴²² CDS Director testimony.

⁴²³ Mother testimony.

⁴²⁴ CDS Director testimony.

⁴²⁵ JE10-27.

⁴²⁶ Social Worker 2 testimony.

⁴²⁷ CDS Director testimony.

⁴²⁸ CDS Director testimony.

H-1. CDS is approximately 48 miles from Student's residence.⁴²⁹ Mother drives Student to CDS and picks Student up and returns home after school.⁴³⁰ Mother does not return home during the interim.⁴³¹ During the drive, Student watches movies, does homework using her Chromebook, or discusses her day.⁴³² The drive takes between 1-1 ½ hours each way.⁴³³ Parents are not requesting that the District provide the Student with transportation.

H-2. Student attended CDS during the ESY 2018-2019, she was present in school 27 of 30 days of attendance.⁴³⁴

H-3. During the school year 2018-2019, through the date of completion of the hearing, Student had attended CDS 143 days (No breakdown of number of days of attendance in 2018 or 2019 was provided).⁴³⁵

H-4. The parties stipulated at hearing that the IRS rate of transportation reimbursement is .56 cents per mile for transportation by private vehicle through December 31, 2018 and .58 cents thereafter. As there is no clear evidence delineating how many days of school Student was present in 2018 and how many in 2019..

I. Tuition

I-1. Mother testified that Parents had paid Student's tuition at CDS. Parent's paid \$2,626.00 for ESY and \$20,000 for school year 2018-19.⁴³⁶ No written documentation was provided.

I-2. Parents paid LB for reading services, invoices were provided.⁴³⁷

⁴²⁹ Personally identifiable information is in Appendix A. Mothers testimony.

⁴³⁰ Mother testimony.

⁴³¹ Mother testimony.

⁴³² Mother testimony.

⁴³³ Mother testimony.

⁴³⁴ Mother testimony.

⁴³⁵ Mothers testimony.

⁴³⁶ Mother testimony.

⁴³⁷ Mother testimony and P95-10

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

DISCUSSION AND CONCLUSIONS OF LAW

Issue One: Whether the IEPs drafted for Student on September 7, 2016, and October 3, 2017⁴³⁸ were reasonably calculated to provide a FAPE.

Parents contend that the District's IEPs were not reasonably calculated to provide Student with an educational benefit. They assert that the District failed to consider outside provider's evaluations, including its own evaluations, when drafting Student's goals resulting in the failure to provide Student with goals in the areas determined to be the Student's most challenging. Further they assert the IEPs did not contain enough baseline present levels of academic and functional performance related to the annual goal to be able to assess whether Student was making progress on the goals and failed to include the level of instruction that would be used to assess the goal.

District asserts that at all times, it provided Student with a FAPE through the provision of special education and related services. Student, with the aid of intensive special education services and supports, made consistent and steady progress toward her goals and objectives and her overall functioning in the school environment.

The Applicable Law

The Individuals with Disabilities Education Act ("IDEA") requires States receiving federal funds to make a free appropriate public education ("FAPE") available to all children

⁴³⁸ The original issue originally included the IEP from October 2, 2018, at hearing it was determined that this was not an IEP, it was the domain consent and this IEP date was deleted from the issue. Student was at CDS on this date. IEP

with disabilities residing in the State. *Forest Grove School District v. T.A.*, 557 U.S. 317, 230, 129 S.Ct. 2484, 2492 174 L. Ed.2d. 168 (2009). 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”).⁴³⁹ 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.”⁴⁴⁰

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.*

Here the Parent’s have alleged procedural violations regarding the District’s use and maintenance of the IEP records. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies impeded the student’s right to a FAPE, significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child, or caused a deprivation of educational benefit.⁴⁴¹ The testimony is clear, the computerized IEP program used by the District allows for user error on the identification of

⁴³⁹ Honig v. Doe 484 U.S. 305, 310 (1988) and 34 CFR §§300.320-324

⁴⁴⁰ 34 CFR§300.22.

⁴⁴¹ 20 USC§ 1415(ff)(3)€; 34 CFR §300.513(a).

dates for documents,⁴⁴² and that the District was aware of these errors.⁴⁴³ These data entry errors make it difficult to determine which IEP team members were present at an IEP meeting and who participated in the drafting of Student's goals. Witnesses were unsure of whether they were in attendance at IEP meets making their evidentiary testimony difficult to weigh. Dates on IEPs were modified by hand. The placement page on Student's fifth grade IEP was for Student's sixth grade placement.⁴⁴⁴ However confusing these errors made for the presentation of evidence in this hearing, these procedural inadequacies did not significantly impede the Student's right to a FAPE, nor did these errors impede the Parent's opportunity to participate in the decision-making process. There was no testimony presented that Student did not receive the services required by the IEP due to teacher confusion regarding dates. Parents and their advocate/attorney were present for all IEP meetings and no testimony was presented that the District failed to provide Parents with copies of IEP documents. These procedural errors did not cause a deprivation of educational benefit to the Student. Therefore, these procedural errors are found to be insufficient to determine a violation of FAPE and award Parents' requested remedies.

“The IEP is the means by which special education and related services are ‘tailored to the unique needs’ a particular child.” *Andrew F.*, 137 S. Ct. at 994 (quoting *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)). The IEP must describe the special education and related services that will be provided so that the child may advance appropriately toward attaining annual goals and, when possible, be involved and make progress in the general education

⁴⁴² FOF A-11 and E-4

⁴⁴³ FOF A-11.

⁴⁴⁴ FOF C-11.

curriculum.⁴⁴⁵ Additionally, an IEP must include a statement of the child's present levels of academic achievement and functional performance (PLOP), measurable annual educational goals, including academic and functional goals designed to meet the child's needs that result from the child's disability, and specify the nature of the special service the district will provide.⁴⁴⁶

In 2012, Parent's provided a neuropsychological evaluation, which is not at issue in this case, this evaluation determined Student to have both visual and auditory dyslexia⁴⁴⁷ and notified Parents (and the District) that a therapeutic school might be necessary.⁴⁴⁸

In December 2015, when Student was in fourth grade, the district conducted a triennial re-evaluation of Student.⁴⁴⁹ This evaluation is not at issue. Student's full-scale IQ was found to be extremely low, at the first percentile.⁴⁵⁰ However, the provider noted that due to anxiety and impulsivity the results of the assessments are likely an underrepresentation of Student's true cognitive and academic abilities.⁴⁵¹ The evaluation disclosed that Student's math skills were late kindergarten/early first grade, with a very low computation score.⁴⁵² Student's receptive language and vocabulary skills were below average.⁴⁵³ The evaluation raised concerns about Student's anxiety levels, with increased academic challenges, in more rigorous educational settings.⁴⁵⁴ The evaluation identified Student's most challenging area as written expression.⁴⁵⁵ It recommended that

⁴⁴⁵ 34 C.F.R. § 300.34(c)(10)(i), (ii) and (iv); 20 U.S.C. § 1414(d)(1)(A)(i)(IV)

⁴⁴⁶ 34 CFR §300.22 and 34 CFR§300.320(a).

⁴⁴⁷ FOF B1

⁴⁴⁸ FOF B1f

⁴⁴⁹ FOF B2. District's evaluation is not at issue in this case.

⁴⁵⁰ FOF B2.

⁴⁵¹ FOF B2a.

⁴⁵² FOF B2b.

⁴⁵³ FOFB2g

⁴⁵⁴ FOF B2j.

⁴⁵⁵ FOFB2d

phonemic awareness skills be explicitly taught.⁴⁵⁶ This evaluation confirmed what the District already knew about Student's disabilities.

The results of this evaluation should have provided critical information to guide the IEP team in planning Student's academic future. However, at an IEP/re-evaluation conference held on December 16, 2015, there appears to be little, if any, discussion of the evaluation's findings and recommendations.

Although written expression was determined to be Student's most challenging area, no goal was developed for written expression in either Student's fifth or sixth grade IEP. Upon entering CDS, it was determined Student could not write a sentence.⁴⁵⁷

The February 2, 2016 IEP developed one reading goal, learning 50 new sight words.⁴⁵⁸ Although, the District's evaluator recommended that phonemics be explicitly taught,⁴⁵⁹ and the present level of academic achievement for this goal acknowledges that Student has difficulty decoding new words,⁴⁶⁰ no decoding goal was provided. To assist Student in reaching the sight word reading goal, the District agreed to increase Student's reading minutes to 90 minutes per day using the Wilson reading program, this amount of individual instruction was later determined to be optimal by a Wilson specialist,⁴⁶¹ and to monitor Student's progress, using Fountas and Pinnell, to determine if an increase in instructional intensity would be effective.⁴⁶² Although Student's evaluation placed reading functioning in a mid-year kindergarten range, the team chose to monitor Student's progress using Aimsweb- based on a second grade level, the resulting progress chart shows Student

⁴⁵⁶ FOF B2ki.

⁴⁵⁷ FOF G-6

⁴⁵⁸ FOF E2b.

⁴⁵⁹ FOF B2

⁴⁶⁰ FOF E2a.

⁴⁶¹ FOF C-9.

⁴⁶² FOFC-7 and E2a

dramatically missing her anticipated rate of improvement.⁴⁶³ Again at the IEP meeting on February 28, 2016, the Parent presented concerns about Student's reading skill level.⁴⁶⁴ The District's response was to continue to progress monitor Student for an additional 8 weeks⁴⁶⁵ and to train the SPED Teacher in the reading program requested by the Parents, Lindamood Bell.⁴⁶⁶ It was not determined whether, had Student been progress monitored at the correct level, it would have evidenced progress in Wilson. There was no discussion about the use of auditory books as recommended.

Student's fifth grade IEP, September 2016 presented a singular reading goal based on the Lindamood Bell program, Seeing Stars.⁴⁶⁷ At this time, District assessed Student using the Fountas & Pinnell ("F & P") reading system, Student's level in September 2016 was early kindergarten,⁴⁶⁸ the District did not explain how, given the intensity of the Wilson and Lindamood Bell instruction Student received, Student's F & P level fell from level D reported on February 20, 2015⁴⁶⁹ to level B 18 months later. Based on this assessment, how the present levels of performance for sight words was developed is unclear, as the number of sight words Student knows on the development date is not specified.⁴⁷⁰ The present level of performance fails to offer any comparison between sight words learned under Wilson and the current sight word list. However, SPED Teacher was surprised Student's knowledge of sight words was so low, especially after the outside provider.⁴⁷¹ There was no acknowledgment of the influence of the outside Lindamood Bell

⁴⁶³ FOF E-2-d-i.

⁴⁶⁴ FOF C-7.

⁴⁶⁵ FOF C-7

⁴⁶⁶ FOF C-8

⁴⁶⁷ FOF E-4.

⁴⁶⁸ FOF E-4b

⁴⁶⁹ FOF E1a.

⁴⁷⁰ FOF E-4.

provider on the goal. Despite having this information, the District's IEP team agreed to continue to use the Lindamood Bell reading program, which appears to have been ineffective for this Student or modify the goal strategy to allow Student to make academic progress in reading. Although, the District had no clear starting point in September of 2016, the June of 2017, progress report specifies Student has mastered 245 of the 300 Star Words, which the SPED Teacher found to be slow and steady progress.⁴⁷²

However, the sixth grade, October 3, 2017, singular reading goal, developed by the SPED Teacher, states Student's present level of performance as: Student knows a total of 159 words of the Seeing Stars word list.⁴⁷³ Although Student participated in the private LB summer program, this regression was explained as "summer regression". Student's goal was to master 350 new sight words and mastery was defined as recognizing the word automatically without prompting 5 consecutive times.⁴⁷⁴ In December of 2017, the District failed to address Parental concerns about Student needing another reading goal, beside sight words, and the District's failure to provide individualized instruction.⁴⁷⁵ As of June 6, 2018, the District alleged Student knew 294 of the 300 word list, a net gain of 49 words. This was determined to be slow and steady progress for the Student.⁴⁷⁶ When tested at CDS in the Summer of 2018, Student was unable to identify all alphabet letters.⁴⁷⁷

Student's sixth grade math goals were developed on October 13, 2017. Student's math teacher assisted in the development of the goal, which she alleged was based on her review of Student's previous math progress testing⁴⁷⁸ and, in part, on Student's

⁴⁷² FOF E-5.

⁴⁷³ FOF E-5.

⁴⁷⁴ FOF E5A

⁴⁷⁵ FOF E-5B

⁴⁷⁶ FOF E-5C.

⁴⁷⁷ E-6.

⁴⁷⁸ FOF F4.

computerized assessment.⁴⁷⁹ The base grade for the math program Case Manager 1 used for the assessment was third grade.⁴⁸⁰ The goal was drafted with the intent that it be ambitious for Student, but it lacked what type of math problem the goal was meant to address.⁴⁸¹ Case Manager 1 was unaware that Student was being taught using an incorrectly leveled program until December 13, 2017, when, in response to Parent concerns about progress in math, the IEP team determined Student was being educated using a 3rd grade program, which was not Student's appropriate level.⁴⁸² In February 2018, the District provided Student, with the correct level math program.⁴⁸³ Using that program Student's skills were placed at a first grade level.⁴⁸⁴ After the correct program was provided, Student's progress monitoring results did show an upward trend.⁴⁸⁵ Case Manager believed this showed slow and steady progress based on ability.⁴⁸⁶ When tested at CDS in the Summer of 2018, Student's Aimsweb placement was first grade.⁴⁸⁷

An IEP is reasonably calculated to confer educational benefits “when it is likely to produce progress, not regression or trivial educational advancement.” *Jaccari J. v. Board of Education of City of Chicago, District 299*, 690 F. Supp. 2d 687 (ND. Ill. 2010); quoting *Alex R., ex re Beth R. v. Forrestville Valley Comm Unit Sch. Dist. #221*, 375 F. 3d 603, 613 (7th Cir. 2004). The *Jaccari* case set forth five factors to consider in determining whether a student made appropriate progress and received a FAPE: 1) child's potential; 2) whether the IEPs were tailored to Student's unique needs; 3) whether the IEPs provided access to

⁴⁷⁹ FOF

⁴⁸⁰ FOF F4b.

⁴⁸¹ FOF F4.

⁴⁸² FOF F4 c.

⁴⁸³ FOF 4 c.

⁴⁸⁴ FOF F4d.

⁴⁸⁵ FOF F4e.

⁴⁸⁶ FOF F4f.

⁴⁸⁷ E-6.

specialized services; 4) whether they addressed disability-related disruptive acts; and 5) whether the child achieved progress during the relevant time period.

The District has argued that that Student made “slow and steady” academic progress in light of her unique circumstances.⁴⁸⁸ It is not disputed that Student’s standardized testing placed Student in the low or extremely low range, however, it is the District’s own 2015 evaluation which suggests that due to anxiety and impulsivity during testing the assessments are likely an under-representation of Student’s true cognitive and academic abilities.”⁴⁸⁹ What the Student’s true potential, when given appropriate goals, supports, and progress monitoring, might be, has yet to be determined.

Student’s 2017 IEP in Math and Reading goals were clearly not geared to address Student’s unique needs. The District did not follow the recommendations of its own evaluator, did not provide goals in the area found to be Students most challenging, did not provide appropriate present levels of academic performance to determine if Student was making progress. Although the IEP team appears to have given into Parents’ educational advocate’s demands for goal modification, it is ultimately the responsibility of the IEP team to provide appropriate goals. Further, the District failed to timely address Parental concerns regarding the lack of progress on Student’s goals and failed to heed the warnings of it’s own progress monitoring. The District failed to clearly demonstrate that Student made any progress in reading during Student’s fifth and sixth grade IEPs. Student’s sixth grade math instruction, the IEP of October 2017, provided math instruction at a level which was over Student’s knowledge base, which the evidence suggests, may have caused a regression in Student’s math skills.

⁴⁸⁸ FOF

⁴⁸⁹ FOF B2a.

Student's academic vocabulary goal, was drafted with no supporting level of academic performance,⁴⁹⁰ it did not consider Student's unique needs as she moved into a 6th grade setting with general education science and social studies. The goal merely duplicated the fifth grade goal. This is a clear violation of FAPE for the school year 2017-2018.

After carefully reviewing the evidence presented, the evidence supports a finding that the District did not adhere to the IDEA mandate and failed to provide Student with a free appropriate public education. For these reasons, I find that, by a preponderance of the evidence, the District failed to offer an appropriate placement with sufficient intensity and amount of special education services. I also find that, by a preponderance of the evidence, the Student received no "meaningful benefit" from her reading education at the District school from November 2016 to June 2018 and in math from August 2017 through June 2018.

Issue Two: Whether Cove School is an appropriate placement for Student for the extended school year ("ESY") 2019 and for the 2019- 20 school year.

Parent's next contend that resulting from the District's failure to provide FAPE, Student requires a placement in a therapeutic day school to meet her individualized needs and that as a result of this failure, Student needs intensive multisensory integrated instruction, delivered on a consistent and frequent basis, in a small individualized setting, which includes individualized reading instruction. Further that CDS can meet these needs and is an appropriate placement for Student for the 2019 extended school year and for the 2019-2020 school year.

⁴⁹⁰ FOF D4d.

The District argues that it is required to place Student in the least restrictive environment available, and that CDS, a therapeutic day school, does not provide access to general education instruction and Student's peers, is an overly restrictive environment.

A. The Applicable Law

The IDEA contemplates that a FAPE will be provided to handicapped students in most instances in "regular public schools, with the children participating as much as possible in the same activities as nonhandicapped children, but... also provides for placement in private schools at public expense where this is not possible." *Burlington School Comm. v. Mass. Dept. of Educ.*, 471 U.S. 359, 369, 105 S.Ct. 1996, 85 L. Ed.2d. 385 (1985). Every school district is required to have a continuum of placements available for all disabled students. 34 CFR § 300.115. Students with disabilities must be educated with their non-disabled peers to the maximum extent appropriate. 20 U.S.C. §1412(a)(5)(A). Removal of a student with a disability from the "regular education environment" may occur "only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." *Id.* Mainstreaming, however, is not required "at the expense of other IDEA educational requirements and is only applicable if the IEP meets IDEA requirements." *Board of Educ. of Murphysboro Comm Unit Sch. Dist No. 186 v. Illinois State Bd. Of Educ*, 41 F. 3d 1162, 21 IDELR 1046 (7th Cir. 1994). If a child's placement does not confer a "meaningful benefit" to the student, and a more restrictive program is likely to provide such benefit, then the child is entitled to be placed in the more restrictive program. *P. v. Newington Bd of Educ*, 51 IDELR 2 (2nd Cir 2008). Additionally, a district must take into account and consider a parent's opinions and information regarding the student's placement and the nature of the student's disability. 34 CFP §300.322, 300.324 (a)(ii).

B. Discussion

This hearing officer has already found that the Parents have met their burden of proof and that Student's IEPs did not meet the IDEA requirements for reading and math. In support of the Parents assertion that a therapeutic day school is Student's appropriate placement, Parents rely on the August 9, 2017 recommendation of the Neuropsychologist, the testimony of CDS Director, Parent's testimony and preferences and the District's evaluation indicating Student's elevated anxieties could be an impediment for Student when facing increased academic challenges in more rigorous educational settings.⁴⁹¹

CDS has small class sizes, low student teacher ratio, an integrated teaching approach with collaboration, multisensory instruction and an executive functioning program.⁴⁹² CDS provides Student with a Wilson certified reading instructor, individualized speech language and pushed in services to assist with academic language, assistive technology, occupational therapy, and social work services.⁴⁹³

Evidence has shown that Student's anxiety has subsided since attending CDS and that she is currently off medication⁴⁹⁴ and enjoys coming to school and homework.⁴⁹⁵ During the District's 2018 re-evaluation at CDS, Psychologist 2, who was aware Student was medicated for attention difficulties, found Student's time on task percentage was 100%.⁴⁹⁶ It is speculation to attempt to assess what Student's reaction would be if she was returned to her previous District placement.

⁴⁹¹ FOF B-2j

⁴⁹² FOF G-4.

⁴⁹³ FOF G-7

⁴⁹⁴ FOF A-7

⁴⁹⁵ FOF B5-a

⁴⁹⁶ FOF B-5c1.

CDS Director expressed concern that due to Student's premature outside interest, she would have difficulty interacting with typically developing peers. Parent questioned whether Student's inability to communicate with her peers, combined with her noise cancelling headphones, would make her a social pariah. In 2017, the District drafted two social work goals for Student to address Student's difficulties with peer interaction, in June 6, 2018, Student had not yet been able to achieve her goal of an introductory statement and two follow up exchanges with a peer outside of a social work setting.⁴⁹⁷

The District is required by IDEA and its regulations to provide an appropriate education, not the best possible education or the placement the parents prefer. *Heather S. v. State of Wis.* 25 F 3d 1045, 1057 (7th Cir 1997), (citing *Board of Educ. of Community Consol. Sch. Distr 21 v. Illinois State Bd of Education*, 935 F. 2s 712,715 (7th Cir.)). Although, the District did not specifically address this question, from the testimony it presented, it appears that the District would return Student to HMS, with placement and services similar to what was previously provided, and revised goals in accordance with Student's current levels of academic performance. In District schools Student would have opportunities for inclusion in the general education environment and access to same age peers. This previous placement, in Student's sixth grade year, failed to provide Student a FAPE. Student was not able to take advantage of her same age peers due to social work issues, which despite District attempts could not be resolved in one school year.

Parents, their expert witness⁴⁹⁸, and the evidence presented have shown the need to have Student remain in the segregated environment of CDS. Parent has expressed concern about Student's age and the fact that the window for opportunity to address Student's

⁴⁹⁷ FOF D-4b.

⁴⁹⁸ CDS Director.

deficits is closing. The District has not proposed any alternative placement. The Student has lost one year of educational benefit (2017-2018) because of the District's failure to provide FAPE in the HMS setting. The preponderance of the evidence in this matter indicates District has not shown that Student will receive an appropriate education under an IEP offered by the District and the District has not proposed any alternative settings where Student could be satisfactorily educated in a District school. The Parents have expressed their preference to have Student placed in a therapeutic day school. I concur.

Issue Three: Whether Student is entitled to compensatory educational services resulting from a violation of FAPE.

Parents seek various compensatory educational services resulting from the District's violations of FAPE.

A. Applicable Law

Compensatory education is equitable remedy hearing officers can award to compensate parents for a district's failure to provide for their disabled child with a free and appropriate public education. In determining compensatory awards, "[t]he question is how much compensatory education – if any – it's 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).

There are primarily two competing approaches used to craft a compensatory education award, specifically, 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 “qualitative approach relied upon by the Sixth and D.C. Circuits. *Reid v. District of Columbia*, 401 F. 3d 516, 43 IDELR 32 (D.C. Cir 2005). The Seventh Circuit has yet to rule on which approach it believes is preferable.

The right to compensatory education accrues from the point FAPE was denied. Compensatory education can be awarded to whatever extent is necessary to make up for the denial of FAPE and it is not necessarily limited to the two-year limitations period. *G.C. v. Ligonier Valley Sch. Dist. Auth.* 802 F3d 601 (3rd Cir. 2015).

As a remedy in this case, Parents have requested placement for the remainder of the current school year 2018-2019 and prospective placement of Student at CDS for the summer of 2019 and the school year 2019-2020. A hearing officer may award “educational services...to be provided prospectively to compensate to a past deficient program.” *B. ex re. R.G. v. Fort Bragg Dependent Schs.*, 343 F. 3rd 295, 308 (4th Cir.2003); *Reid v. District of Columbia*, 401 F.3d 415, 524 (D.C. 2005); *Petrina w. v. City of Chicago Pub. Sch. Dist No 299*, 53 IDELR 259 (N.D.Ill. 2009). In *Petrina*, the court held that a “flexible individualized approach” should be used. A compensatory education award should be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school should have supplied in the first place.”

The denial of FAPE in the area of reading continued for two full school years. Districts and outside providers have consistently determined that Student’s reading level was in the first percentile. However, District’s Fountas & Pinnell assessment in June of 2015 determined Student was reading at level “E”, a first grade level.⁴⁹⁹ Following the

⁴⁹⁹ FOF E1b.

District's agreement to switch reading programs, Student's reading progress became nonexistent to minimal, it is only recently, that Student's progress scores in F & P show that she is again reading at level "E". District provided no reading goal in decoding and none in written expression, which also impacted Student's reading ability. Student's inability to read, even at a first grade level, also impacted Student's ability to read and comprehend material in other academic areas.

The denial of FAPE in the area of math continued for one year. The assessment used to determine Student's level of instruction was above Student's level of knowledge. Student struggled with math presented at this level until the Parent questioned the progress in December 2017, it was then that the District realized the error and then took several weeks to correct the instructional error, by this time Student had experience regression which was not fully realized prior to the end of the school year. Student lost an entire year of potentially added mathematic knowledge during this time.

It is difficult to calculate the educational deprivation, however, Parent's expert, CDS Director, recommended that Student remain in the CDS placement for the summer of 2019 and the school year 2019-2020. Based on the evidence presented of Student's educational needs and the progress Student has made at CDS, I accept this recommendation that the amount of compensatory education to put Student in the position she would have been had Student not be denied a FAPE.

Therefore: Parents request for compensatory education is granted.

I award Student the rest of the 2018-2019 school year at CDS, at District expense.

I award Student extended school year services for the summer of 2019 at CDS at District expense, to prevent Student from experiencing regression. Further I award Student

an additional 30 minutes of reading, 30 minutes of math and one 30 minute session of speech language each day during extended school year to be provided at CDS, after school. Additional services to be paid by District.

I award Student one year at CDS, at District expense, for school year 2019-2020.

I award Student additional compensatory education services, at CDS, at District expense, in the form of 30 minutes of instruction, 3 X per week, for school year 2019-2020 in reading; 30 minutes of instruction 1 X per week for school year 2019-2020 in math; and 30 minutes of instruction 1 X per week for school year 2019-2020 in speech language.

Parent did not request transportation services and they are not addressed.

REMEDIES

Under the IDEA, a hearing officer has discretion whether to order reimbursement, and whether that reimbursement should be awarded in whole or in part. 20 U.S.C. 1412(a)(10)(C)(iii). “When a court or a hearing officer concludes that the school district failed to provide a FAPE and a private placement was suitable, it must consider all relevant factors, including a notice provided by the parents and the school district’s opportunities for evaluating the child, in determining whether reimbursement for some or all of the cost of the child’s private education is warranted.” *Forest Grove School Dist. v. T.A.*, 557 U.S. 230 52 IDELR 151, p. 9 (2009).

In this case, there was no argument that the Parent’s unilateral placement was suitable. Not only did the Parents work for years with the District to attempt to provide Student a FAPE, but the Parents also worked with the District to obtain Student’s triennial evaluation. I therefore determine that reimbursement for the cost of Student’s private

education at CDS is warranted and I award Parents reimbursement for the cost of the CDS tuition, for the year 2018-2019 as specified under order.

I award the Parent reimbursement for transportation costs as specified under Order.

Reimbursement for additional expenses

Parent's have requested the following additional remedies to address any finding that Student was denied a free appropriate public education in violation of IDEA. I would like to address these requests:

Parents have argued that without the neuropsychologist's evaluation in 2017 and without the LB private tutoring, Parents would not have known to make an educational placement and therefore, should be reimbursed for their costs for these services.

Initially, Parents have offered no evidence that the LB private tutoring provided Student any educational benefit. Conversely, the evidence is clear that after numerous hours spend in LB tutoring over a period of more then one year,⁵⁰⁰ Student gained no educational benefit. Parent's own expert, CDS Director testified that she could not believe Student had received LB private instruction in addition to the District's Lindamood Bell instruction. This request is denied.

The request for reimbursement for the neuropsychologist's evaluation. Parents could have formally requested the District provide them with a neuropsychological evaluation. If the District wished to deny this request, the District could have filed for due process. By requesting reimbursement, the Parents are now seeking to circumvent this procedure. Additionally, the evidence shows that Student is now seeking the

⁵⁰⁰ FOF E-3

neuropsychologist on a regular basis,⁵⁰¹ this evidence was not contested. This request is denied.

IT IS ORDERED THAT:

1. The District shall convene an IEP meeting by June 14, 2019 and place the Student at CDS, at District expense, for the remainder of the school year, Spring semester 2019 and extended school year, summer 2019.
2. I award Student a placement at CDS, at District cost, for school year 2019-2020, not including extended school year, summer 2020.
3. I award Student an additional 30 minutes of reading, 30 minutes of math, and 30-minutes of speech language each day during extended school 2019 year to be provided at CDS, after school. These additional services to be paid by District.
4. I award Student additional compensatory education services, at CDS, at District expense, in the form of 30 minutes of instruction, 3 X per week, for school year 2019-2020 in reading; 30 minutes of instruction 1 X per week for school year 2019-2020 in math; and 30 minutes of instruction 1 X per week for school year 2019-2020 in speech language.
5. The District shall reimburse Parents for:
 - a. Parents' tuition payment to CDS for school year 2018-2019. Prior to June 14, 2019, Parent shall provide to District a receipt from CDS certifying the payment by Parent to CDS for Student's tuition, in the amount of \$20,000.00.
 - b. Transportation provided by the parent from home to CDS round trip, 48 miles each way, 2 trips per day totaling 96 miles per day @.56 cents per mile (2018 rate) equals \$53.76 per day, for:
 - i. Extended school year 2018, for 27 days of attendance equals \$1,451.52.
 - ii. For school year 2018-2019, through date of conclusion of hearing, April 30, 2019, 143 days of attendance, at the 2018 rate only due to insufficient evidence, establishing number of days use in 2019, \$7,687.68.
 - iii. Spring, 2019: Within 15 business days (M-F, not including Federal/State holidays), after the conclusion of the Spring 2019 semester, Parent shall provide proof of Student's CDS attendance to District. Within 15 business days (M-F, not including Federal/State holidays) after receipt of proof from CDS of Student's attendance, District shall reimburse Parents' mileage of 96 miles per day, from April 30, 2019 to the end of the school year, at the 2019 IRS rate of .58 per mile. (Failure of Parent to provide this documentation within the time period required shall act as a waiver).
 - iv. ESY 2019. Within 15 business days (M-F, not including Federal/State holidays) after receipt of proof from CDS of Student's attendance, District shall reimburse Parents' mileage of 96 miles per day at the 2019 IRS rate of .58 per mile for the number of school days Student was in attendance. (Failure of Parent

⁵⁰¹ A-5.

to provide this documentation within the time period required shall act as a waiver).

v. School year 2019-2020. Within 15 business days (M-F, not including Federal/State holidays), after the conclusion of each semester (December/June), Parent shall provide proof of Student's CDS attendance to District. Within 15 business days (M-F, not including Federal/State holidays) after receipt of proof from CDS of Student's attendance, District shall reimburse Parents' mileage of 96 miles per day at the 2019 IRS rate of .58 per mile for the number of school days Student was in attendance. Should the official IRS rate increase/decrease for 2020, mileage shall be paid at the then prevailing rate. (Failure of Parent to provide this documentation within the time period required shall act as a waiver).

Within 45 calendar days of receipt of this Order, the [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: May 14, 2019

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



APPENDIX A

[REDACTED] v. [REDACTED] Elementary School District [REDACTED]
Case No: 2019- DP-0153

Identification	NAME	ACRONYM
CHILD	[REDACTED]	KMJ
Parent	[REDACTED]	Mother
Attending School	[REDACTED]	CS
Tutoring sessions	[REDACTED]	LB
District Middle School	[REDACTED]	HMS
District Elementary School	[REDACTED]	KES
District Elementary School	[REDACTED]	FES
Pediatric neuro psychologist	[REDACTED]	Neuropsychologist
Neurologist	[REDACTED]	Neurologist
Special Ed Teacher/Case Manager	[REDACTED]	Case Manager
Director of Pupil Personnel Services	[REDACTED]	Director
Social Worker at HMS	[REDACTED]	Social Worker
Clinical Director of Cove School	[REDACTED]	CDS Director
Program Supervisor at SW Cook County Cooperative	[REDACTED]	Program Supervisor
Wilson Reading Specialist	[REDACTED]	Wilson Specialist
HMS School Psychologist	[REDACTED]	Psychologist
KES Special Education teacher	[REDACTED]	SPED Teacher
HMS Principal	[REDACTED]	Principal

HMS Psychologist	[REDACTED]	Psychologist 2
District curriculum coordinator. Holds a doctorate in educational psychology from National Louis University.	[REDACTED]	Psychologist 1
Principal at HMS	[REDACTED]	Principal
Occupational therapist for District	[REDACTED]	Occ. Therapist
Social Worker at HMS	[REDACTED]	Social Worker 2
Speech-Language Pathologist at HMS	[REDACTED]	Speech Pathologist

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

I the undersigned, Mary Jo Strusz, certify that on May 14, 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:

[REDACTED]

[REDACTED]

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

May 14, 2019

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

[REDACTED]

