

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

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

Student,

Mary Jo Strusz

v.

Case No. 2019-DP-0194

█ District No. █,

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 January 31, 2019, Petitioner filed a Due Process Complaint (“DPC”) against the █ District No. █ (“District”) pursuant to IDEA.¹ Petitioner is the parent (“Parent”) of █ (“Student”), a fifteen-year-old student with a disability who was found eligible on February 5, 2013 for an IEP under the criteria Specific Learning Disability (primary) and Speech Language and Other Health Impairment (secondary), and is currently eligible under the criteria of Autism, Other Health Impairment, and Specific Learning Disability.² Parent’s DPC alleges that the District failed to timely provide Student with an individualized educational program (“IEP”) pursuant to the IDEA, and

¹ IHO-1. (References to the record in this case are designated as “IHO-____.”)

² IHO-58a.

subsequently failed to provide Student with an IEP that offered him a free appropriate public education (“FAPE”).³ This Impartial Due Process Hearing Officer (“IHO”) was appointed to preside over this case on February 4, 2019.⁴

The IHO issued an initial status call letter and preliminary order on February 4, 2019.⁵ The District submitted a response to the DPC on February 11, 2019.⁶ On February 19, 2019, the parties participated in mediation, but mediation was unsuccessful.⁷ The prehearing conference in this matter was set for March 11, 2019.⁸

The parties each filed their prehearing conference disclosures on March 8, 2019.⁹

The initial prehearing conference was conducted by recorded telephone conference call on March 11, 2019.¹⁰ At the conference, the due process hearing was scheduled for May 15, 16,17 and 20, 2019, but the conference was not completed due to time constraints.¹¹ The prehearing conference was continued to March 16, 2019, and the 45-day decision timeline was continued to June 5, 2019 to accommodate the hearing dates.¹² The March 16, 2019 Prehearing conference date was subsequently continued to the March 30, 2019.¹³ A second prehearing conference was held on March 30, 2019, and a third prehearing conference was held on April 7, 2019.¹⁴ The Prehearing Report and Order was entered on April 20 2019.¹⁵

³ IHO-1a-b.

⁴ IHO-3.

⁵ IHO-3.

⁶ IHO-4.

⁷ IHO -5b.

⁸ IHO-5c.

⁹ IHO-6,7.

¹⁰ IHO-8.

¹¹ IHO-8,9.

¹² IHO-11.

¹³ IHO-12b

¹⁴ IHO-28a.

¹⁵ IHO-28.

On May 8, 2019, the parties provided the IHO with copies of their proposed exhibit and witness lists.

The due process hearing took place on May 15, 16, 17, and 20, 2019 at the District Office located at [REDACTED], [REDACTED], Illinois. An official court reporter was provided by the District for all hearing dates. The hearing was closed to the public. The parties presented five joint witnesses, Parent presented three witnesses, and the District called two witnesses.¹⁶

At the start of hearing on May 17, 2019, the District made a verbal motion for a directed verdict. Each side presented argument on the motion and the motion was denied by the IHO.

The parties entered into a joint stipulations of fact and material admissions on May 17, 2019, which were admitted as IHO Exhibit 59-(a-b), this document provided: 1) The District proffered a domains/consent form for [Student's] case study evaluation to the Parent's counsel on August 16, 2018.; 2) On August 31, 2018, the Parent signed consent for the case study as drafted by the District and provided to her through counsel on August 29, 2018; 3) The District proffered a domains/consent form for a speech/language evaluation to the Parent's legal counsel on December 7, 2018; 4) The Parent signed consent for the speech/language evaluation as drafted by the District on December 10, 2018; and 5) The district t conducted a speech/language evaluation and met on April 3, 2019 to review the evaluation at an IEP meeting.¹⁷

¹⁶ Personally identifiable information is in Appendix A.

¹⁷ The speech/language evaluation is not an issue for this hearing.

On May 17, 2019, the parties entered into a stipulation, marked as IHO Exhibit 60-(a-b) as to the following facts: 1) Parent Exhibit 12: a. [REDACTED] LEA Rep] served at the [REDACTED] School District [REDACTED] (“District [REDACTED] LEA representative at [Student’s] May 24, 2016 Eligibility/IEP triennial review meeting at CTDS, b. Parent Exhibit 12 is the IEP generated at the May 24, 2016 IEP meeting; 2. Parent Exhibit 13. [REDACTED] LEA Rep] served at the District [REDACTED] LEA representative at the September 16, 2016 IEP meeting. 2. Parent Exhibit 13 is the IEP generated at the September 16, 2016 IEP meeting.; 3) Parent Exhibit 14. [REDACTED] LEA Rep] served at the District [REDACTED] LEA representative at the November 28 and December 5, 2016 IEP meetings. B. Parent Exhibit 14 is the IEP generated at the November 28 and December 5, 2016 IEP meetings.; 4. Parent Exhibit 15: a. Parent Exhibit 15 is an IEP Amendment dated December 16, 2016 present4d by [REDACTED] LEA Rep] on behalf of District [REDACTED] and agreed by the Parent [Mother]. 5. Parent Exhibit 16: a. [REDACTED] LEA Rep] served at the District [REDACTED] LEA representative at the February 13, 2017 IEP meeting. b. Parent Exhibit 16 is the IEP generated at the February 13, 2017 IEP meeting. 6. Parent Exhibit 17: [REDACTED] LEA Rep] served at the District [REDACTED] LEA representative at the December 5, 2017 IEP meeting. b. Parent Exhibit 17 is the IEP generated at the December 5, 2017 IEP meeting.

At the conclusion of the evidence presentation, the IHO admitted the following exhibits¹⁸: For the School District: SD-3 (admitted over objection), SD-4, SD-5 (admitted over objection), SD-6, SD-7, SD-8, SD-9, SD-11, SD-13, SD-14, SD-16, SD-17, SD-18, SD-20, SD-21, SD-22, SD-23, SD-24, SD-31, SD-32, SD-33, SD-34, SD-35, SD-36, SD-37, SD-38, SD-39, SD-40, SD-43, SD-44, SD-45, SD-48, SD-49, Parent objected to the admission of SD-47, the objection was sustained and the documents is included solely to preserve the record.

¹⁸ Due to the complexity of the evidence presentation, a table of cross-referenced exhibits prepared by the Attorneys is attached as Appendix B.

For the Parent: P-1, P-2, P-4, P-5, P-6, P-7, P-9, P-10, P-11, P-12, P-13, P-14, P-15, P-16, P-17, P-18, P-19, P-20, P-21, P-22, P-26¹⁹ (1-11 withdrawn), (12-29 admitted), (30-43 withdrawn), (44-48 sustained objection/record only), (49-57 withdrawn), (58-60 admitted over district objection), (61-74 withdrawn), (75-79 admitted), (80-90 withdrawn), (91-93 admitted), (94-96 withdrawn), (97-99 sustained objection/record only), (100-101 admitted), P-27²⁰ (1-37 admitted), (38-108 withdrawn), (109-114 admitted), P-31, P-32, P-33 (1-2), P-34, P-35, P-36, P-38, P-39, P-42, P-43, P-44, P-45, P-46, P-49, p-51, P-52, P-53, P-64, P-65, P-66-1 (no attachment), P-67, P-68, P-79 (admitted over District objection), P-86 (sustained objection/record only), P-90, P-101, P-119, P-120, P-129, P-130, P-134 (sustained objection/record only), P-141, P-142 (sustained objection/record only), P-143, P-144 (sustained objection/record only), P-145 (admitted over objection), P-147, P-149, P-152, P-153 (sustained objection/record only), P-156. All exhibits not specifically identified were withdrawn at the conclusion of evidence and testimony.

No written transcript has been provided and this decision is based on the IHO's personal notes and recollection. In rendering this decision, the IHO has considered all documents entered into evidence, testimony by the parties' witnesses, the parties' opening statements and closing arguments, the parties' suggested case law,²¹ as well as independent research. This decision is issued within ten (10) business days after the hearing's conclusion, as required by Illinois law.²²

PARENT'S ISSUES AND REMEDIES REQUESTED

¹⁹ Only a portion of P-26 were offered into evidence, only the pages of the exhibit are identified.

²⁰ Only a portion of P-27 was offered into evidence, only the pages of the exhibit are identified.

²¹ Copies of the closing statements and the supporting case law were provided to the IHO by the parties.

²² 105 ILCS 5/14-8.02a(g55)(5).

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

Issue One: Whether Student was denied a Free Appropriate Public Education ("FAPE") when the District allegedly failed to timely develop an IEP between Student's date of enrollment in the District (June 7, 2018) and December 7, 2018.

Issue Two: Did the District have an obligation to offer Student a FAPE between June 7, 2018 and the date of the Parent's unilateral placement in a private residential therapeutic day school on July 18, 2018, and if so:

- i. Was the Parent's unilateral placement of Student at the [REDACTED] School appropriate?
- ii. Do the equities weigh in favor of ordering the District to reimburse Parent for the cost of the private school, or are the equities a factor in determining the amount of the reimbursement?

Issue Three: Whether the Student was denied FAPE when the District allegedly failed to conduct a timely and appropriate evaluation of Student pursuant to the IDEA.

Issue Four: Whether the District's IEP of December 7, 2018 was appropriate.

- i. Did the District fail to provide timely notice of the topics to be discussed in advance of the IEP meeting?
- ii. Did the District failed to consider the input of private providers in the areas of:
 - a) Psychological evaluation, and CCBS and GRS Staff.
- iii. Did the IEP include measurable goals to address Student's multiple and complex areas of need?
- iv. Did the IEP include appropriate services and supports?
- v. Did the District predetermine Student's educational placement prior to the December 7, 2018 IEP meeting.
- vi. Did the District deny Parent meaningful participation in the development of the Student's December 7, 2018 IEP?
- vii. Did the District appropriately determine the Student's least restrictive placement as the Alternative Educational Program at HPHS?

REMEDY: Parent seeks the following remedies: An order for retroactive reimbursement for any and all costs associated with Student's unilateral placement at the [REDACTED] residential day school, from July 18, 2018 to the date of non-enrollment, including tuition, transportation, and related expenses.

THE DISTRICT'S RESPONSES

In response to the request for reimbursement, the regulations implementing IDEA are clear. In order to be eligible for tuition reimbursement, two criteria need to be met: 1) the agency failed to make a FAPE available to the child prior to the unilateral placement; and 2) the unilateral placement is appropriate.²³ The District asserts that Parent never gave the District the opportunity to make a FAPE available and that Student was unilaterally placed immediately upon Student's transition into the District, before any IEP meetings. District alleges that the Parent had no intention of giving the District an opportunity to make a FAPE available. Further, the unilateral placement at the therapeutic residential school is not appropriate to meet Student's needs, which can be met in a general education setting. A residential placement is far too restrictive.

The District denies the Parent's allegations contained in the Complaint in their entirety. Student entered the District without an IEP and in a unilateral residential placement, the most restrictive placement possible. Since the District had never seen the Student, and Parent provided no IEP for Student nor contact with the residential placement, the District asked to evaluate Student and determine Student's educational needs. The District acted expeditiously and in a caring manner to determine and then meet Student's needs.

²³ See 34 USC §300.148.

FINDINGS OF FACT

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

A. Background

1. Student is a fifteen (15) year old boy²⁴ currently attending BRS.²⁵ Student is in the 9th grade and was unilaterally placed by the Parent²⁶ at GRS on July 18, 2018. On March 8, 2019, Student was unilaterally placed by Mother at BRS.²⁷

2. Student's residence was in ██████████ district ██████ ("district ██████ for grade school and in ██████████ High School District ██████ ("District ██████") for high school.²⁸ District ██████ consists of two high schools and serves six northern Illinois communities.²⁹ Student's residence falls under the jurisdiction of HPHS.³⁰ Student has resided in District ██████ and ██████ for ten (10) years.³¹

3. Student has a twin sister who is globally disabled, medically complex and cannot walk or talk.³² Student's sister resides in district ██████ and District ██████. Mother has successfully worked with District ██████ Director regarding the special education for the daughter and no due process cases were filed by Mother on behalf of daughter.³³

4. Early in life, Student suffered two fever induced seizures and was diagnosed with a Seizure Disorder.³⁴ Student's issues became apparent when he was a toddler. Student had trouble transitioning to different environments and would watch others playing but did not participate.³⁵ Student continued to be treated for seizure disorders.³⁶

²⁴ Personally identifiable information is in Appendix A.

²⁵ Id.

²⁶ Id.

²⁷ Mother and CDS Director testimony.

²⁸ Mother and

²⁹ Director testimony.

³⁰ Director testimony.

³¹ Mother testimony

³² Mother testimony.

³³ Mother testimony.

³⁴ Mother testimony.

³⁵ Mother testimony.

³⁶ Mother testimony.

5. From Kindergarten to third grade (2009-2013), Student attended BES, a district [REDACTED] elementary school.³⁷ The first day of Kindergarten Student had a major seizure, saw a neurologist, and was subsequently diagnosed with epilepsy.³⁸ Student had a seizure plan in kindergarten.³⁹ During kindergarten, Parents ascertained that Student was not at the same reading level as his peers and although concerns were voiced to the teacher, they were dismissed.⁴⁰ Parents followed up with tutoring, a therapist and a social worker.⁴¹

6. In March of 2011, Student received a neuropsychological evaluation⁴² (“Rush eval”). During the evaluation, Student was found to have attention deficit hyperactivity disorder (“ADHD”), specific learning disability (“SLD”) and speech/language disorder.⁴³ The results of the evaluation were shared with district [REDACTED] but he was not evaluated for special education services.⁴⁴ The author of this evaluation did not testify.

7. During the years 2010-2012 (first and second grade), Parents provided Student with a speech language pathologist, a tutor, and a social worker.⁴⁵

8. In January, 2013, Student received a speech/language evaluation⁴⁶ and a Psychological/academic evaluation.⁴⁷ An eligibility meeting and IEP meeting followed, and on February 5, 2013 (third grade) district [REDACTED] found Student eligible for an IEP for special education and related services under the eligibility criteria of SLD (primary) and speech and language and other health impairment (secondary).⁴⁸ This IEP provided three speech language goals,⁴⁹ a reading goal,⁵⁰ and two social work goals.⁵¹ Parents believed that these services were insufficient to meet Student’s needs.⁵² The authors of these evaluations did not testify.

³⁷ Mother testimony.

³⁸ Mother testimony.

³⁹ Mother testimony.

⁴⁰ Mother testimony.

⁴¹ Mother testimony.

⁴² P-1 and SD-14.

⁴³ Mother testimony and P1-12/SD14-12.

⁴⁴ Mother testimony.

⁴⁵ Mother testimony.

⁴⁶ SD13-38.

⁴⁷ SD13-(46-55)

⁴⁸ School Psychologist Testimony and IHO 58-a and SD13-(5-6), SD 13-87, SD13-14

⁴⁹ SD13-(13-18)

⁵⁰ SD13-19.

⁵¹ SD13-(20-23)

⁵² Mother testimony.

9. In July of 2014, Student received a private evaluation from Parent Psychologist.⁵³ This evaluation recommended an alternate, therapeutic educational placement.⁵⁴ Parents elected to unilaterally place Student at CTDS. This choice was partially based on the way speech/language services were “pushed” into the classrooms.⁵⁵ Parents filed a due process complaint against district 112⁵⁶ and on May 19, 2015 Student’s IEP was amended to provide that Student placement was changed from district ■■■ to CTDS, effective 9/15/2014. “[Student’s] placement will remain CTDS for the 2015-16 school year, and Student is eligible for transportation and ESY for the 2015-16 school year.”⁵⁷ The author of this evaluation did not testify.

10. Student’s father died in September 2015 following an illness.⁵⁸ Student had difficulty accepting his death. Student continued at CTDS and was receiving outside therapies.

11. Student was hospitalized at a children’s hospital (“■■■■” as an in-patient from January 5-11, 2016 and participated in a partial day program from January 12 -25, 2016.⁵⁹ “Student was admitted for aggression and agitation, most of which was typically directed at his mother.”⁶⁰

12. On March 21, 2016, Mother consented to Student’s triennial re-evaluation.⁶¹ The agreed domains did not include a cognitive functioning assessment. The domain listing provides that a neuropsychological assessment was completed in March of 2011, so no additional information was needed at this time.⁶² The July 2014 evaluation was not referenced. On May 24, 2016, Student was found eligible for special education services under disability category of specific learning disability and other health impairment (secondary).⁶³ In addition to Mother and representatives from CTDS, a representative from district ■■■ was present.⁶⁴ At this meeting, Student’s proposed placement was changed to a split

⁵³ Personally identifiable information is location in Appendix A. Evaluation at P12-28/SD11.

⁵⁴ Mother testimony and P12-41 and SD11-14 (The school district’s exhibit did not include the summary of scores from the evaluation, which were included in P12).

⁵⁵ Mother testimony.

⁵⁶ Mother testimony.

⁵⁷ Mother testimony and P10-1.

⁵⁸ Mother testimony.

⁵⁹ Mother testimony and P145 (Parent drafted log). No supporting documentation of this hospitalization was provided at hearing. There is no mention of this hospitalization in any Student IEP.

⁶⁰ P5-1.

⁶¹ Mother testimony and P12-85.

⁶² P12-86.

⁶³ P12-2.

⁶⁴ Mother testimony and P12-4. Stipulation 1, IHO Exhibit 60-a.

placement between the therapeutic day school and partial integration in his home school.⁶⁵ The resulting IEP was a combined CTDS and district [REDACTED] IEP.⁶⁶

13. Student was hospitalized at [REDACTED] between July 22-26, 2016.⁶⁷ Following this hospitalization, Student began receiving applied behavior analysis at the Autism Family Center. This therapy was not really helpful.⁶⁸

14. Beginning in the fall of Student's 2016-17 school year (7th grade), Student began to transition to a district [REDACTED] school.⁶⁹ On September 16, 2016, an IEP meeting was held to discuss Student's change of placement and an IEP was developed for Student.⁷⁰ Student's placement was changed to EMS for math and science and Student remained at CTDS for all other classes.⁷¹ The meeting notes specify that Student likes the additional adult support being provided, is requesting that he be provided with grades rather than a pass/fail grading system, and does not like to look different.⁷² Mother shared concerns about Student's executive functioning skills and requested more support for science. No other concerns were mentioned.⁷³ There is no mention of Student's diagnosis of autism, no mention of Student's summer hospitalization, and Student's eligibility, to include autism, is not present.

15. Student was hospitalized from October 11-12, 2016 at Rogers Hospital and from October 14-21, 2016 at [REDACTED]⁷⁴

16. There was a change of placement meeting on 10/27/16.⁷⁵ On or about October 31, 2016, Student entered EMS full time. On November 28, 2016, a 30 day IEP review was held.⁷⁶ Mother's educational concerns indicate that on November 28, 2016, Mother was concerned about Student's ability to complete and record his homework assignments, his organizational skills, and his emotional well-being when in classes he perceives as too hard for him.⁷⁷ Additional notes from the meeting reveal that Mother

⁶⁵ Mother testimony and P12-71. The Create report states: "In middle school, [Student] continued at the specialized school, but continued to feel as though his peers were not a good fit for him and that he was missing out socially by being enrolled in a specialized program. Due to [Student's] concerns, his mother dually enrolled him at his private school for ½ day and a public school for the other half of the day." P21-(25-26)/SD3-(14-15).

⁶⁶ Mother testimony.

⁶⁷ P-145.

⁶⁸ Mother testimony.

⁶⁹ Mother testimony.

⁷⁰ Mother testimony, P13, and IHO Exhibit 60a.

⁷¹ Mother testimony and P13-(28-29).

⁷² P13-31.

⁷³ P13-31.

⁷⁴ P-145

⁷⁵ P14-2. (There is no evidentiary record of what took place at this meeting.).

⁷⁶ P14-44.

⁷⁷ P14-4.

wanted more support for Student, was concerned about the English teacher's report of Student experiencing anxiety in the co-taught English class, and Student's lack of participation in social studies (even with a modified curriculum).⁷⁸ This meeting adjourned early at the request of the Mother,⁷⁹ and was continued to December 5, 2016.⁸⁰ The notes from the December IEP meeting provide that one of Student's teachers was helping him catch up on homework from when he was absent. Student's medical care plan was discussed due to concerns over prescribed seizure medication. Student's goals were reviewed, Student's further technology training was discussed, accommodations were revised, Student was provided 30 additional minutes of speech/language, and there was no mention of Student's October hospitalization.⁸¹

17. On December 16, 2016, there was an amendment to Student's 12/6/2016 IEP to acknowledge Student's difficulties in the co-taught English program and to address Student's challenges with social emotional peer interactions.⁸² Student's English placement was changed to the SAIL classroom, which Mother described as a classroom with kids who have social emotional needs.⁸³ Mother agreed to this amendment.⁸⁴ This change was to take place on January 3, 2017.⁸⁵

18. According to Parent log,⁸⁶ Student was admitted to [REDACTED] on January 6, 2017. However, during testimony, Parent testified that Parent Ex. 143⁸⁷ indicated it was January 16, 2017. Mother testified that the basis for this admission was Student having intermittent explosive disorder. There was no testimony from the staff at [REDACTED]. No medical reports were presented with a diagnosis of intermittent explosive disorder.

19. On February 16, 2017, Student's Psychiatrist⁸⁸ recommended an urgent placement in a residential academic and therapeutic setting.⁸⁹ The letter was not shared with district [REDACTED] until December 2017.⁹⁰ In making this recommendation, Psychiatrist's letter states:

⁷⁸ P14-37.

⁷⁹ P14-37

⁸⁰ P14-44.

⁸¹ P14-44.

⁸² P15-5.

⁸³ Mother testimony and P15-1.

⁸⁴ IHO Exhibit 60-b (stipulations).

⁸⁵ P15-5.

⁸⁶ P-145.

⁸⁷ This exhibit was denied admission into the record for insufficient foundation.

⁸⁸ The author of this report did not testify.

⁸⁹ P5-(1-2). Psychiatrist did not testify at hearing.

⁹⁰ See FOF B.3.e. *Infra*.

“Since [January 2016] I have had over 40 encounters either with patient, patient and his mother, or mother alone in attempt to stabilize patient in his home setting. He has also engaged in in-home ABA therapy during some of this time as well. In the past, he has participated in grief counselling, specialized school settings, and intensive outpatient therapies. He has been hospitalized several times since January 2016 for similar presentations involving dysregulated behavior focused often on reactions to his mother. There has never been an incident involving serious injury to his mother, but there have been incidents of threatening to do so and to injure his wheel-chair bound sister.”⁹¹

The letter goes on to specify: “It is my opinion that a placement in a therapeutic day school setting alone will not be sufficient to maintain [Student’s] safety and that of others. In addition, it is my opinion that because of past failures in other academic settings, a day school setting will not be sufficient in fostering his educational development and his adaptive functioning. He has participated in multiple therapeutic settings, often more intensive ones because of threats to harm himself or others, but has consistently functioned, at his best, when in a 24-hour 7 day a week setting (I am referring to inpatient psychiatric units) with therapeutic support. I would hope that separation from his current environment with ongoing therapeutic interventions for multiple psychiatric disorders would benefit patient in developing goal-oriented thinking and patterns of behavior that would not negatively impact his relationship with his family and would maintain safety in all environments.”⁹²

A similar acknowledgement is found in the Create report: “Leading up to [Student’s] enrollment, [Student] began to become increasingly aggressive towards his mother.”⁹³

20. On February 1, 2017, Student began at the Family Center day program.⁹⁴ On February 13, 2017, an IEP meeting was held.⁹⁵ Mother testified the purpose of this meeting was to increase Student’s speech/language minutes to 80 minutes.⁹⁶ Evidence admitted shows the purpose of the meeting was to change Student’s placement.⁹⁷ The notes from this meeting provide that [Mother] shared that Friday, 2/17/2017 will be Student’s last day in his partial placement at Family Center and that Student will be going to a residential placement this week. [Mother] shared that Student “is not open for learning at any of the local therapeutic placements and that this is not an easy decision for her and her primary reason for

⁹¹ P5-1.

⁹² P5-2. This appears to be the letter Mother provided to district [REDACTED] just prior to a December 2017 IEP meeting, a.

⁹³ SD3-15/P21-25.

⁹⁴ P-145 (Mother’s log) and P16-36.

⁹⁵ P-16. This document was stipulated to be accurate by the parties. See IHO Ex. 60b.

⁹⁶ Mother testimony and P16-33. Note: speech/language was increased to 80 minutes at the 12-16-2016 IEP, see P15-2.

⁹⁷ P16-36.

doing this is safety.”⁹⁸ The meeting notes indicate someone identified as “LW”⁹⁹ stated “[Student] deals with anger management difficulties and takes it out on those he is close to (mom, sister, nanny).”

District [REDACTED] changed Student’s placement to a therapeutic day school.¹⁰⁰ Mother advised district [REDACTED] that Student would be unilaterally placed at CCBS. Mother chose to send him to CCBS in [REDACTED].

B. CCBS Placement.

1. From February 15, 2017¹⁰¹ to July 17, 2018, Student attended CCBS.¹⁰² CCBS is a private therapeutic school for middle school boys. Each group has a therapist and a counselor team. The counselor is viewed as “big brother” who helps with day to day logistics.”¹⁰³ As of 12/2017, current staff to student ratio was 10:2 and a special education teacher from the local school district came once per week for an hour to work with Student individually on academic goals.¹⁰⁴ There is one counselor for eight students.¹⁰⁵ There was no social worker or psychologist on staff.¹⁰⁶ A full time nurse is on staff.¹⁰⁷ CCBS’s philosophy is based on a “medicine wheel” with integrated social and emotional components.¹⁰⁸ Students do not leave CCBS until they complete the medicine wheel.¹⁰⁹ No representative from CCBS testified.

2. Upon enrollment at CCBS, Student received a Master Treatment Plan (“MTP”), which outlines Student’s reason for admission, prior treatment/placement and diagnosis at admission:¹¹⁰

- a. reason for admission: Psychiatrist recommended long term treatment;
- b. Prior treatment: Outpatient psychiatrist at [REDACTED] and inpatient stay at [REDACTED]
- c. Diagnosis: attention-deficit hyperactivity disorder, predominantly hyperactive type; generalized anxiety disorder; developmental coordination disorder; specific learning disorder, with impairment in reading.¹¹¹

⁹⁸ P16-36.

⁹⁹ Note: LW was not identified on the participant sheet-P16-2.

¹⁰⁰ P16-41.

¹⁰¹ P27-1

¹⁰² Mother testimony.

¹⁰³ P17-7.

¹⁰⁴ P17-7.

¹⁰⁵ P17-38.

¹⁰⁶ P17-7.

¹⁰⁷ P17-39.

¹⁰⁸ Mother testimony.

¹⁰⁹ Mother testimony.

¹¹⁰ P27-1

¹¹¹ P27-1.

3. On December 5, 2017, district [REDACTED] held an IEP [REDACTED] to discuss Mother's request to cover the cost of education for Student's attendance at CCBS.¹¹³ Mother's Attorney and an attorney for district [REDACTED] were present. A Student Services Plan from [REDACTED] dated 5/3/17 was reviewed. Student's MAP scores and grades were reviewed.¹¹⁴ The CCBS local school district service plan provided two goals: a reading goal (the progress note on the reading goal dated, 10/17/2017, stated growth was minimal progress),¹¹⁵ and a speech language goal (with no goal status/progress; no formal goal was written on the paperwork shared).¹¹⁶ There is no speech-language pathologist on CCBS staff.¹¹⁷ Mother knew that CCBS did not have a speech language pathologist on staff and thought the county was providing speech language services.¹¹⁸ District [REDACTED] IEP provided the following information:

a. Present levels of academic achievement and functional performance states:

“[Student's] specific learning disability affects his participation in the general education curriculum because he struggles to learn at the same pace as his grade level peers and benefits from direct instruction. Additionally, [Student] needs additional organizational support to ensure that he is completing his work and pacing himself appropriately.”¹¹⁹

b. There are 10 goals included which appear to be from the Student's last district [REDACTED] IEP (prior to CCBS placement). There is no updated information on goal progress after the unilateral CCBS placement.¹²⁰

c. The IEP team agreed that a residential placement was too restrictive and that a therapeutic day school was Student's least restrictive environment.¹²¹

d. Extended school year (“ESY”) services were approved; the type, amount, and duration of services to be provided were listed as social work services from June 5, 2017 to 8/21/2017.¹²² There is no mention of ESY services for the summer of 2018. The end of the meeting notes state “[Student]

¹¹² The IEP, Parent Exhibit 17 was stipulated to be accurate by the parties, See IHO Ex. 60b.

¹¹³ P17-3.

¹¹⁴ P17-3.

¹¹⁵ P17-5.

¹¹⁶ P17-5 and P17-55. Mother testified she though Student had a speech/language goal at CCBS.

¹¹⁷ P17-39.

¹¹⁸ Mother testimony.

¹¹⁹ P17-8.

¹²⁰ P17-(9-28).

¹²¹ P17-35.

¹²² P17-36.

remains eligible for ESY.”¹²³ However, the local school district services plan specifies “excludes summer months.”¹²⁴

e. Meeting notes indicate that Mother shared a January-February 2017 letter at this IEP meeting from Student’s medical providers specifying that residential placement was recommended. The district ■ IEP team did not have this letter when the IEP team met in February 2017 and the district’s attorney shared that the school team had insufficient time to review the information prior to the December 2017 meeting date.¹²⁵ This letter was not updated from the private provider.¹²⁶

f. Meeting notes specify that “There is insufficient information to inform goal decision at this time. [Mother] is in agreement.”¹²⁷

g. District ■ did not have any behavioral data and the IEP team decisions were made based on the limited information provided by parent.¹²⁸ “[Student] is able to function without self-harm and without the need for 24-hour care in a low structured support.” “The school team does not have sufficient objective, data-based information at this time to make a determination regarding current social-emotional and behavioral functioning. [Mother] agrees.”¹²⁹ “Based on current level of performance shared, [Student] would be able to function successfully as of now, with information shared, to function successfully as a student with resource level support in general education.”¹³⁰ Based on current academic functioning, [Student] does not require residential support. Insufficient behavioral data exists to support residential placement.¹³¹ District would require behavioral data to show impact on education.¹³²

h. Mother’s Attorney shared that the family believes [Student] currently requires residential placement but understands that the school team requires more information regarding behavioral data to inform decision.”¹³³

¹²³ P17-40.

¹²⁴ P17-55.

¹²⁵ P17-37.

¹²⁶ P17-38.

¹²⁷ P17-39

¹²⁸ P17-39.

¹²⁹ P17-39.

¹³⁰ P17-39.

¹³¹ P17-39.

¹³² P17-39.

¹³³ P17-40.

i. The district stated it is available to perform an evaluation and is open to considering a private evaluation if the family shares one.¹³⁴

4. In January 2018, Mother filed for due process against district [REDACTED] which resulted in a settlement.¹³⁵

5. On April 25, 2018, the school district for the county where CCBS was located provided Student with a “Services Plan.” The plan as admitted into evidence contains no information about the participants and is unsigned.¹³⁶ The plan is for the normal school year services (excludes summer months).¹³⁷ The plan has no acknowledgement that Student is a resident of Illinois, district [REDACTED]. This plan proposed 3 goals for Student: two reading and a written expression goal.¹³⁸ There is no evidence that this plan was implemented by CCBS.

6. During Student’s residency at CCBS, Student was provided with a monthly update, which included a generalized list of social skills Student appears to be working toward, information about Student’s academic work (English, math, social studies, environmental science), therapeutic work (peer, individual, group, and family sessions), and health and recreation updates.¹³⁹

a. Student’s April 2018 update shows student working on:

i. social skills: 1) dealing with boredom; 2) displaying appropriate control; 3) recognizing own feelings; 4) showing appreciation; 5) though stopping; and 6) using self-monitoring and self-reflection.¹⁴⁰

ii. Academic information: 1) social studies- [Student] struggles to keep up academically. Even when cued that he will be call on, he misses information; 2) English- No information reported; 3) Science- No information reported; 4) Math-No information reported.¹⁴¹

iii. Therapeutic: There is a lengthy listing of Student’s progress in his various therapies, including: 1) individual therapy: [Student] is currently working on difficult situations, peer interactions, filtering inappropriate comments and behaviors, and advocating assertively with peers; 2) group therapy [Student] has become more engaged, present and active with his participation. This has

¹³⁴ P17-40.

¹³⁵ Mother testimony.

¹³⁶ SD17. This exhibit contains the same document provided at P 27-(39-44) which Parent withdrew from evidence.

¹³⁷ SD17-5.

¹³⁸ Mother testimony.

¹³⁹ p27-

¹⁴⁰ p27-31.

¹⁴¹ p27-32

been refreshing to see; 3) Peer interactions: [Student]has a tendency to speak repetitive jokes or comments which annoy his peers. He continued to be more immature then his 14 year old peers, but continues to try to fit in.¹⁴²

b. Student's May 2018 update shows Student working on:

i. social skills: Exactly the same as reported in April;¹⁴³

ii. Academic information from teachers: 1) English- [Student] looks to avoid work but also shows much more competency and motivation then when he first arrived, has responded well to being with an older group of boys, feels comfortable until there is an assignment that deals with grammar, writing, or both; 2) Environment Science: [Student] takes ownership of his work, keeps up with his school work, outside of class is he active and gets along well with peers; 3) math: productivity has stayed constant-not great.; 4) Social Studies: [Student has had a few issues recently, he does tend to get distracted easily during the presentation of material but stays focused when he is working on handouts. P27-35.

iii. Therapeutic: Peer interactions- -are an ongoing area of maturing and growing through practice, [Student] can be polite and cooperative; inappropriate peer interactions tend to be verbal humor and are on effort to join in or git in; he associates with peers and can have conversations especially about sports.¹⁴⁴

7. Student graduated from CCBS on July 17, 2018 because he had completed all activities required to walk the path of the Medicine Wheel.¹⁴⁵ Student's closing report,¹⁴⁶ which is undated, notes Student graduated in July of 2018, ¹⁴⁷ has made progress, but that Student's literal and dichotomous thinking style restricts his understanding of social engagement, and that Student struggles with inappropriate comments, misreads social cues and is obsessed with spectator sports.¹⁴⁸ Student's

¹⁴² P27-32.

¹⁴³ P27-34.

¹⁴⁴ P27-36.

¹⁴⁵ Mother testimony and P27-109.

¹⁴⁶ An email chain from CCBS to Mother, Mother to her Attorney and then Mother's Attorney to District's Attorney places the drafting of this letter on or about November 7, 2018. (P65-1).

¹⁴⁷ P65-2.

¹⁴⁸ P27-110.

academic needs were determined to require a specialized setting, with small classes and well trained teacher specialists in his specific learning challenges.¹⁴⁹ The author of this report did not testify.

8. Mother was working with an educational consultant to find Student a placement after CCBS.¹⁵⁰ Mother visited GRS at the end of June 2019 and Student had an interview at the end of June.¹⁵¹ The educational consultant also recommended programs for Student near his residence.¹⁵²

C. ENROLLMENT IN DISTRICT [REDACTED]

1. The District [REDACTED] enrollment process for special education students begins in the fall of a student's 8th grade year when parents are asked to enroll the student,¹⁵³ and arrangements are made for District [REDACTED] staff to attend IEP meetings.¹⁵⁴ During January of a student's 8th grade year, the District case managers hold matriculation meetings with the middle school case managers.¹⁵⁵ Following these meetings, IEP meetings are scheduled to draft high school goals and prepare transitions.¹⁵⁶ Student's are registered at this time.¹⁵⁷ In June, district 212 provides student files to District [REDACTED] counseling takes part of the file and the special education files are sent to records.¹⁵⁸

2. Mother believed Student was eligible for ESY,¹⁵⁹ so Mother registered Student in District [REDACTED] on June 7, 2018 by completing an online registration.¹⁶⁰ Online registration for Summer school started on February 21, 2018 at 7 a.m,¹⁶¹ and summer school began on June 11, 2018 and ended on Friday, July 20, 2018.¹⁶² Enrollment was limited.¹⁶³ Special education courses varied and those seeking information on special education courses were directed to contact Director at (224)-XXX-XXXX.¹⁶⁴ Students were

¹⁴⁹ P27-112/P65-7.

¹⁵⁰ Mother testimony.

¹⁵¹ Mother testimony.

¹⁵² Mother testimony.

¹⁵³ Director testimony.

¹⁵⁴ Director testimony.

¹⁵⁵ Director testimony.

¹⁵⁶ Director testimony.

¹⁵⁷ Director testimony.

¹⁵⁸ Director testimony.

¹⁵⁹ Mother testimony.

¹⁶⁰ Mother testimony and P31-2.

¹⁶¹ P152-1

¹⁶² Director testimony and P152-1.

¹⁶³ P152-1

¹⁶⁴ P152-1 (information redacted for privacy).

only allowed three absences during the six week course.¹⁶⁵ There was no testimony that Mother contacted the Director to determine ESY special education courses available to Student.

3. Following the online registration, the District requested proof of residency and Mother completed a handwritten certificate of residency, which is dated June 6, 2018, and includes the notation “*[Student] is enrolled at [CCBS] school in [REDACTED].”¹⁶⁶ The school is not identified as a therapeutic residential school. Mother testified she completed the enrollment by returning the required residency form¹⁶⁷ with supporting residency documentation by email on June 11, 2018.¹⁶⁸ There is a discrepancy between the District and Mother’s exhibits regarding the supporting documents and a review of the supporting documents determines that Mother could not have returned P31-5 on June 11, 2018 because this gas bill she provided was not billed until June 22, 2018.¹⁶⁹ The date that Mother completed the Student’s enrollment by providing the proof of residency was not established.

4. District [REDACTED] has over 1000 Students, approximately 500 of them have an IEP or a 504 plan.¹⁷⁰ Neither the District’s online format or the residency document requests information about whether a student has an IEP or is eligible for special education services.

5. After registration, District [REDACTED] requested school records from the Mother. No date for this request was established. However, on June 27, 2018 at 10:14 p.m., Mother’s Attorney responded by email to an unknown attorney (“unknown attorney”) who works at the law firm currently representing District [REDACTED]. This email acknowledges that the District recently requested school records from [Mother].¹⁷¹ The email specifies: “We would appreciate it if an IEP could be scheduled to discuss this recent evaluation of [Student] and his placement for fall.”¹⁷² There are two attachments, which were alleged to be an evaluation referred to as the Create report¹⁷³ and the Create addendum.¹⁷⁴ On June 27, 2018 at 10:24 p.m., Mother’s Attorney sent an email to unknown attorney stating that attached is one of 2 emails with school records for [Student].¹⁷⁵ The second email was sent at 10:25 p.m.¹⁷⁶ The documents

¹⁶⁵ P152-1.

¹⁶⁶ Mother and Director testimony and P31-(3-4)/SD-(1-2)

¹⁶⁷ Mother testimony and P 31-1, P31-(3-4)/SD-(1-2).

¹⁶⁸ Mother testimony and P31-(5-9) Exhibits P31-(5-9) are not included in SD24.

¹⁶⁹ P31-5.

¹⁷⁰ Record Manager testimony.

¹⁷¹ Mother testimony and P32-1.

¹⁷² P32-1.

¹⁷³ P32-(2-34)/SD-8.

¹⁷⁴ P32-(35-37)/SD-9. Receipt of the addendum is disputed by the District. The school district exhibits 8 and 9 do not include P32-1 and the Create evaluation is identified as SD 8 and the addendum is SD9.

¹⁷⁵ Mother testimony and P33-1.

¹⁷⁶ P33-2.

attached were never identified, were not attached to the exhibit, and no testimony was presented to determine whether the unknown attorney opened or received these emails.

6. Neither Mother, or Mother's Attorney, responded directly to District [REDACTED]'s record request by providing Student's records directly to any District [REDACTED] staff. On June 27, 2018, District [REDACTED] was unaware Student had an IEP.¹⁷⁷

7. On June 28, 2018 at 12:43 p.m., unknown attorney responded to Mother's Attorney indicating that he would "forward the evaluation to the District and see about scheduling an IEP meeting when staff are available."¹⁷⁸ The District's Attorney was included on this email. Director testified that she became aware Student was enrolled in the District after receipt of this email but was not aware Student had an IEP.¹⁷⁹

8. On July 2, 2018, at 9:58 a.m., District [REDACTED] Director¹⁸⁰ sent the District's Records Manager¹⁸¹ an email requesting the Records Manager print the attachments and make a file.¹⁸² There are four attachments.¹⁸³ The attachments were not identified during hearing. The Records Manager did not recall if this was done.¹⁸⁴

9. On July 2, 2018, Mother's Attorney sent a notice of unilateral placement, via facsimile and regular mail, to the co-interim superintendents of District [REDACTED]. This document advised District [REDACTED] that on July 18, 2018, Student would be placed at GRS and that Mother intends to seek reimbursement of costs for that nonpublic facility from District [REDACTED].

10. The District authorized the District's Attorney to respond to the unilateral placement notice that the District would decline to fund the placement.¹⁸⁷ The District had no IEP that would require a residential placement.¹⁸⁸ On July 10, 2018, the District's Attorney responded to the Mother's Attorney

¹⁷⁷ Director testimony.

¹⁷⁸ P34-1. The "evaluation" is singular and there is no mention of the evaluation addendum.

¹⁷⁹ Director testimony.

¹⁸⁰ Personally identifiable information is in Appendix A.

¹⁸¹ Personally identifiable information is in Appendix A.

¹⁸² Records Manager testimony and P35-1. Attached to the email are four documents which appear to be related to Student, but the attachments were never identified during the hearing and are blanked out on the exhibit. (P35-[1-3]).

¹⁸³ P35-1.

¹⁸⁴ Records Manager testimony.

¹⁸⁵ Mother testimony and P119/SD39-1. No transmission record was presented. No evidence of an email being sent was presented.

¹⁸⁶ Mother testimony and P119-1.

¹⁸⁷ Director testimony.

¹⁸⁸ Director testimony.

advising that the District believes it is necessary to convene an IEP meeting to discuss [Student's] current placement.¹⁸⁹ Initially, Mother's Attorney responded by email that Mother was available on July 17, 19, 23,24,27,31, but in a subsequent email corrected those dates to July 23, 24, 27 or 31.¹⁹⁰

11. Summer hours are outside of the teacher's contract so the District tries to avoid summer meetings.¹⁹¹

12. On July 12, 2018, Mother's Attorney advised that she would be out of town August 2-10, 2018.¹⁹²

13. On July 13, 2018, District's Attorney formally responded to Mother's Attorney indicating that the District was declining to fund a unilateral placement "because there has been no determination by the IEP team that [Student's] educational needs require such a placement."¹⁹³ Further, the letter specifies: "In order to fully consider your clients' request that the district fund this placement for [Student] we would like to invite [Mother] to attend an IEP meeting to discuss [Student's] current educational needs and to determine the least restrictive environment appropriate to meet those needs. The District will be in touch regarding dates to hold an IEP meeting after you [Mother's Attorney] return from your vacation on August 10, pursuant to our telephone conversation."¹⁹⁴

a. On July 16, 2018 the District's Attorney emailed Mother's Attorney stating the District was available on August 16, 2018.¹⁹⁵ Mother's Attorney responded on July 17, 2018 that she was available at 8:00 a.m.¹⁹⁶ District's Attorney responded that she provided inaccurate information and the District was only available at noon, and by return email Mother's Attorney responded she would try to make noon work.¹⁹⁷ At 5:54 p.m. on July 17, 2018, the District's Attorney asked Mother's attorney to "Please let me know as soon as you can if the 16th at noon will work. We can also meet a little bit later if that is more convenient for you."¹⁹⁸

b. On July 26, 2018, Mother's Attorney responded that "The afternoon on August 16th is difficult although I am still trying to make the noon time work. What other options are available other

¹⁸⁹ P36-2.

¹⁹⁰ P36-1.

¹⁹¹ Director testimony.

¹⁹² P38-1.

¹⁹³ P120-1/SD38-1.

¹⁹⁴ P-120/SD-38.

¹⁹⁵ SD36-5.

¹⁹⁶ SD36-5.

¹⁹⁷ SD36-4.

¹⁹⁸ SD36-3.

than the afternoon of the 16th.¹⁹⁹ On July 27, 2018, the District's Attorney responded that she could provide other dates but no until September.²⁰⁰ Later that day, the Mother's Attorney responded that "I find it troublesome that for an IEP meeting requested in June the District can offer only two dates in August, limited times on those dates and only for an hour. As you recall, initially the District offered morning times which I accepted, that timeframe was then withdrawn. This District is sending a clear message that [Student's] needs are of low priority to them. I would hope it could do better than that."²⁰¹

c. Mother's Attorney responded on July 27, 2018, that the District had only offered one date in August, during Mother's Attorney's vacation and pointing out that the statements ignore that this request has been pending since June 27th.²⁰²

d. District's Attorney sent the final email in this group on July 28, 2018, again attempting to clarify the chain of scheduling, requesting that Mother's Attorney provide additional dates in August and she will attempt to determine District's availability, but August is booked pretty tightly. Otherwise she will provide dates in September.²⁰³

14. On July 17, 2018, Student graduated from CCBS²⁰⁴ and accompanied Mother directly to GBS.²⁰⁵ Mother and Student flew directly from Atlanta, Georgia, incurring expenses totaling \$1,347.79.²⁰⁶ Student remained at GBS through the end of the summer semester, August 17, 2018, when [Student] returned to Chicago.²⁰⁷

15. District [REDACTED] uses the EStar IEP program. When the case manager finishes the IEP, a student's file is left with the department chairs, who forward it to the special ed records manager,²⁰⁸ and it is the record manager's job to double check that all boxes are completed and nothing is blank. If completed, the records manager finalizes the IEP and emails it to parents. If something is incomplete, the records manager contacts the case manager or department chair and refers it back to them for completion. Records from other districts are received in boxes, sent to the district counseling service and then the special education records are sent to the records manager.²⁰⁹ Records Manager did not contact Mother to

¹⁹⁹ SD36-2.

²⁰⁰ SD36-2.

²⁰¹ SD36-2.

²⁰² SD36-1.

²⁰³ SD36-1.

²⁰⁴ Mother testimony.

²⁰⁵ Mother testimony and P130-4.

²⁰⁶ Mother testimony and P130-(2,4-5).

²⁰⁷ Mother testimony and P130-6.

²⁰⁸ Personally identifiable information is in Appendix A.

²⁰⁹ Record Manager testimony.

request records. Records Manager did not have an independent recollection of when Student's records from district [REDACTED] were received.²¹⁰

16. On August 1, 2018, District [REDACTED] sent a notification of a conference to discuss the educational needs of Student, and an invitation to attend an IEP conference meeting on August 16, 2018 at 12:00 p.m. The purpose of the conference was to discuss unilateral placement by Parent.²¹¹ District [REDACTED] did not have district [REDACTED]'s Student records.²¹²

17. On August 14, 2018, Director became aware that District [REDACTED] did not have any district [REDACTED] records and emailed the Records Manager seeking an old IEP for Student.²¹³ Records Manager attempted to locate Student's file and emailed district [REDACTED] to request Student's records.²¹⁴ Prior to August 14, 2018, the Director did not attempt to obtain Student records from district [REDACTED]

18. On August 14, 2018 at 5:35 p.m., Director forwarded to District Psychologist the email of July 2, 2018 containing an email with "more" files on Student.²¹⁶ District Psychologist looked at these documents, but did not recall specifically what the files contained.²¹⁷ District Psychologist reviewed the Create prior to the domain meeting and used the Create to draft the proposed domains.²¹⁸ District Psychologist drafted proposed domains and forwarded the draft to another district psychologist for review.²¹⁹

D. District [REDACTED] IEP Meetings.

1. On August 16, 2018, an IEP meeting was held. Mother was not present at this meeting due to a death in the family, but she did attend by phone. Mother's Attorney was present.²²⁰ During the meeting:

a. The District requested to evaluate Student. Mother's Attorney consented to move forward with domains and an evaluation, even though it was not on the notice of conference.²²¹

²¹⁰ Record Manager testimony.

²¹¹ P18-1.

²¹² Director's testimony.

²¹³ Director testimony and SD35-2.

²¹⁴ SD35-1.

²¹⁵ Director Testimony.

²¹⁶ District Psychologist and Director testimony. P43-1. (See paragraph 8 infra).

²¹⁷ District Psychologist testimony.

²¹⁸ District Psychologist testimony.

²¹⁹ District Psychologist testimony.

²²⁰ Mother testimony.

²²¹ Mother's testimony.

b. The District proffered a domains/consent form for [Student's] case study evaluation to the Mother's Attorney.²²² The District requested evaluations in the following domains: academic achievement,²²³ functional performance,²²⁴ health,²²⁵ and hearing/vision.²²⁶

i. The existing information about Student was drawn from the Create report. District Psychologist did not have the Create addendum to review.²²⁷ She was unsure where she obtained the CCBS information.²²⁸

ii. As part of the functional performance review, the District requested an interview with Student so his "voice would be heard."²²⁹

iii. The draft domains were provided to Mother's Attorney.²³⁰

c. Student's CCBS services plan was not reviewed, and no IEP or placement were proposed.²³¹

d. On August 20, 2018 was the first day of school for District [REDACTED]

2. Mother reviewed and considered the domains.²³³ Mother voiced objections to the proposed Student interview.²³⁴ Mother did not notify the District that updated information from the Create report addendum was not included.²³⁵ Mother did not volunteer the addendum at this time. The District did not request it.

3. On August 29, 2018, District Psychologist proposed to structure the Student's interview.²³⁶ The structured interview was to center on family, school, and interests.²³⁷

²²² Joint stipulations of fact and material admissions, IHO 59a.

²²³ P19-4/SD7-9. Historical school records needed.

²²⁴ P19-7/SD7-12. Student input needed.

²²⁵ P19-13/SD7-18. Medical review is needed.

²²⁶ P19-14/SD7-19. Information regarding hearing/vision is needed.

²²⁷ District Psychologist testimony. District [REDACTED] did not have the Create addendum at the November 15, 2018 eligibility meeting. (SD3-79).

²²⁸ District Psychologist testimony and P20-5.

²²⁹ Mother and District Psychologist testimony.

²³⁰ P19-19.

²³¹ SD7.

²³² Director Testimony.

²³³ Mother testimony.

²³⁴ Mother and District Psychologist testimony.

²³⁵ Mother testimony.

²³⁶ District Psychologist testimony and SD32-1.

²³⁷ District Psychologist testimony.

4. On August 31, 2018, the [Mother] signed consent for the case study as drafted by the District and provided to her through [Mother's attorney] on August 29, 2018.²³⁸ Mother consented to the evaluation.²³⁹ Mother disagreed with the District's request for an interview, however she gave consent for the District Psychologist to do a structured interview with Student.²⁴⁰ Student's interview was scheduled for September 4, 2018. The only changes between the signed domain and the draft domain proposed by the District psychologist on August 14, 2018 was the functional performance domain.²⁴¹

5. On September 4, 2018, District Psychologist met with Student.²⁴² Student was perceived as being very friendly, nervous, with no consistent eye contact.²⁴³ Once he "warmed up" he disclosed that he did not feel challenged in school, wanted to play an active role in his education, and missed home.²⁴⁴ Student appeared to be typical.²⁴⁵

6. Student returned to GRS on September 6, 2018.²⁴⁶

7. District [REDACTED] rep²⁴⁷ knew that Student's records were transferred to District [REDACTED] but did not know the date.²⁴⁸ She was unaware of when District [REDACTED] first attempted to obtain Student's records.²⁴⁹

8. During September of 2018, District Psychologist received a box of Student's records from district [REDACTED]. This box included all of Student's IEPs, and what District Psychologist believed were all evaluations.²⁵¹ District Psychologist reviewed these records when writing her report.²⁵²

9. On October 5, 2018, District Psychologist completed the Re-evaluation of special education entitlement.²⁵³ All documents which District Psychologist writes and does not sign are considered draft

²³⁸ Joint stipulations of fact and material admissions, IHO 59a.

²³⁹ Mother testimony and P-20.

²⁴⁰ Mother testimony and P 20-6.

²⁴¹ District Psychologist testimony.

²⁴² Mother testimony and District Psychologist testimony. SD5-1.

²⁴³ District Psychologist testimony and SD5-1.

²⁴⁴ District Psychologist testimony.

²⁴⁵ District Psychologist testimony.

²⁴⁶ Mother Testimony and

²⁴⁷ Personally identifiable information is in Appendix A.

²⁴⁸ District [REDACTED] rep testimony.

²⁴⁹ District [REDACTED] rep testimony.

²⁵⁰ District Psychologist testimony.

²⁵¹ District Psychologist testimony.

²⁵² District Psychologist testimony.

²⁵³ SD5-1/P67-2/P67-3/P156. This document appears individually in the Parent exhibits at three different locations. P156 is unsigned.

documents; when it is finalized a signature is attached.²⁵⁴ The document was not finalized until November 12, 2018, when it was signed and returned to the Director.²⁵⁵

10. On November 15, 2018, a meeting was held to review the re-evaluations and, if time allowed and the eligibility decision warranted it, an IEP meeting.²⁵⁶ Mother attempted to contact Student to join the meeting, but reported that he was unavailable.²⁵⁷ At the meeting:

a. Parent provided school updates and progress reports from CCBS, which were reviewed.²⁵⁸ A discipline list was also provided.²⁵⁹

b. District Psychologist shared the records she reviewed.²⁶⁰ She did not have the July 2014 comprehensive cognitive and social emotional evaluation²⁶¹ or the Create addendum.²⁶² The Create from January-February 2018 and District's Psychologist's Student interview were reviewed.²⁶³ District Psychologist also reviewed and considered the February 16, 2017 Parent Psychiatrist report²⁶⁴ and Student's psychiatric history report.²⁶⁵ District Psychologist did not request any additional testing due to the extensive testing which was completed during the Create report, she explained that too many similar assessments taken so close in time could impact the testing results and she believed that the testing reported in the Create report was complete.²⁶⁶

c. District Psychologist reviewed the Student's district [REDACTED] IEP from December 5, 2017, focusing on the goals and the goal areas.²⁶⁷ These goals were not present in the CCBS, MRP, or the CCBS county services plan.

²⁵⁴ District Psychologist testimony.

²⁵⁵ P68-1 and P67.

²⁵⁶ P21-90.

²⁵⁷ SD3-79.

²⁵⁸ P21-90.

²⁵⁹ SD3-79. Which school the discipline list was from is not identified, but from the context of the conversation notes it appears to be the GRS discipline report.

²⁶⁰ District Psychologist testimony.

²⁶¹ District Psychologist later recalled seeing this report attached to an eligibility document from CCTS (P-28).

²⁶² District Psychologist testimony.

²⁶³ P21-90 states that this was (Dr. Tall), however, the dates match the Create report and do not match the (Dr. Tall) report dates of February and March 2011.

²⁶⁴ District Psychologist testimony and P-5.

²⁶⁵ District Psychologist testimony and P-2.

²⁶⁶ District Psychologist testimony.

²⁶⁷ District Psychologist testimony and P17.

d. Nurse's²⁶⁸ evaluation was reviewed.²⁶⁹ Normally, Nurse would review a student's health file, medical diagnoses, and parent info on a student.²⁷⁰ There was no information in Student's health file.²⁷¹ Nurse reviewed the Create report (she did not have the May 2018 addendum) to obtain background information, diagnosis, and drug information.²⁷² Mother was interviewed.²⁷³ Mother reported that Student's last seizure was February 2018.²⁷⁴ Nurse did not ask Mother for records.²⁷⁵ On November 6, 2018, Nurse sent the health evaluation to Mother, specifying that most of the information is from the "full Neuropsychological report from 1/18 and 2/1/18."²⁷⁶ Mother did not volunteer any additional medical records.²⁷⁷ Nurse determined that Student's epilepsy diagnosis and medications have adversely affected his cognitive and intellectual development, which could affect his ability to achieve academically at this time.²⁷⁸ Nurse believes that Student's health related needs could be appropriately met at HPHS.²⁷⁹ Nurse did not address a medical seizure plan at or after this meeting.²⁸⁰ Nurse testified that a seizure report and plan is put into a student's file when a student come into school so that Nurse would have the most up to date medical information available.²⁸¹ Nurse concluded that "based on Student's medical information, there is a likelihood that his Epilepsy diagnosis and medication have adversely affected his cognitive and intellectual development which could affect his ability to achieve academically at this time."²⁸²

e. Mother and Mother's Attorney advised that an additional report was done by a clinical psychologist when Student was in the 5th grade and should have been considered ("July 2014 Report"). The District did not have this report.²⁸³

²⁶⁸ Personally identifiable information is in Appendix A.

²⁶⁹ SD4-1.

²⁷⁰ Nurse testimony.

²⁷¹ Nurse testimony.

²⁷² Nurse testimony and SD4-(1-2).

²⁷³ Nurse testimony and SD4-1.

²⁷⁴ SD4-2.

²⁷⁵ Mother testimony.

²⁷⁶ P64-1.

²⁷⁷ Nurse testimony.

²⁷⁸ Nurse testimony and SD4-2.

²⁷⁹ Nurse testimony.

²⁸⁰ Nurse testimony.

²⁸¹ Nurse testimony.

²⁸² SD4-2.

²⁸³ SD3-80.

f. Mother's Attorney shared a copy of a psychiatric evaluation letter dated February 16, 2017.²⁸⁴

g. The team reviewed and considered the additional information provided by the Mother a discussion about Student's eligibility under the autism category was discussed, "the team agreed to this eligibility, having not enough information to dispute it."²⁸⁵

h. Student was found eligible for services under SLD (reading comprehension), OHI (ADHD), and Autism.²⁸⁶

j. Mother's Attorney agreed to find the most recent speech-language and social communication report and provide it to District's Attorney for HPHS review. She also agreed to find the Create addendum and the July 2014 Clinical Psychologist Report.²⁸⁷

k. Team agreed to reconvene on November 29, 2018 for the IEP meeting.²⁸⁸

l. Mother provided a statement to the eligibility determination, which stated: Student should have an eligibility in written expression and to eliminate this diagnosis and a corresponding eligibility category without review of actual work product; discussion of areas of receptive and expressive language deficit, issues with attention and organization, and corresponding impact on written expressions do a disservice to [Student] and do not provide a clear picture. This document also references the July 2014 report.²⁸⁹

m. The District's final eligibility document includes, but is not limited to: 1) signed participant information; 2) signed eligibility vote (Mother will provide a statement);²⁹⁰ Mother's statement; 4) the Create addendum;²⁹¹ 5) Create report;²⁹² 6) unsigned school psychologist report;²⁹³ 7) Documentation of evaluation results;²⁹⁴ 8) eligibility determination;²⁹⁵ and 9) additional notes.²⁹⁶

²⁸⁴ SD3-79.

²⁸⁵ Sd3-80.

²⁸⁶ SD16-30.

²⁸⁷ SD3-80.

²⁸⁸ SD3-80.

²⁸⁹ Sd3-6.

²⁹⁰ See n above for statement information.

²⁹¹ SD3-9.

²⁹² SD3-(13-45).

²⁹³ SD3-(46-59).

²⁹⁴ SD3-(60-70)

²⁹⁵ SD3-(71-72)and (75)

²⁹⁶ SD3-(79-81).

11. On November 28, 2018, the District emailed Mother a draft of Student's goals and eligibility determination. Although the cover letter specifies the documents are drafts, the documents themselves are not marked drafts.²⁹⁷ The Create addendum was included, even though School Psychologist did not review this document for the eligibility GRS felt Student might be eligible under the Emotional Disturbance eligibility criteria.²⁹⁸ At the meeting:

a. A representative of GRS was present by phone and shared that GRS needed to make program adjustments to meet [Student's] needs, and contemplated whether GRS was the appropriate placement for Student.²⁹⁹ Student struggles with staying on task, listening to directions, homework completion, peer interaction issues, sexual commentary, and difficulty assimilating socially to the classroom structure. Student does not receive speech/language at GRS and it does not have a speech/language therapist.³⁰⁰ GRS did not see a need for support in the area of speech and language.³⁰¹ GRS representative declined to comment on [Student's] social emotional needs as he was not [Student's] therapist.³⁰²

b. After considering GRS information, the IEP team continued to believe OHI, SLD and Autism were the appropriate eligibility categories. The information shared by GRS did not alter the IEP team's decision on eligibility.³⁰³

c. The team discussed a transition plan, which included a transition goal for Student to be competitively employed in the sports industry. Courses of study include: basic course requirements, sports management, fine arts, and learning strategies. The IEP team recommended providing social work services. Mother's Attorney requested the team add speech language supports to Student's transition plan, the team discussed that there is no data to support the need for speech language services and the District requested more information regarding speech and language before making a decision on supports in the transition plan. GRS staff agreed with the transition plan.³⁰⁴

d. Draft goals were discussed. Mother's Attorney reported that the goals had inadequate present level information and were not measurable. District [REDACTED] requested specific suggestions for

²⁹⁷ Mother testimony and P21-1.

²⁹⁸ SD16-30.

²⁹⁹ SD16-30.

³⁰⁰ SD16-31.

³⁰¹ SD16-31.

³⁰² SD16-31.

³⁰³ SD16-31.

³⁰⁴ SD16-31.

changes to the draft goals and no suggestions were provided.³⁰⁵ District staff explained the present levels were based upon evaluative data along with the limited and vague information shared by GRS. Further, since [Mother] provided a release of information to speak to GRS the week of the IEP meeting, District staff would make efforts to contact GRS to gather additional information on [Student's] present levels of functioning.³⁰⁶

e. Mother's Attorney advised that Student needs a written expression goal and a social emotional goal.³⁰⁷ It was discussed that after a review of the evaluation, Student was not found eligible with a specific learning disability in the area of written expression and there is no data to support his need for a written expression goal.³⁰⁸ Further, that Student does not meet eligibility criteria for an Emotional Disturbance and the data does not support a need for a goal tailored to social emotional functioning.³⁰⁹

f. The team agreed upon accommodations and modifications.³¹⁰

g. The meeting concluded with staff recommending that Mother and Mother's Attorney review the goals, propose suggested revisions, gather additional data from GRS and reconvene on December 7, 2018.³¹¹

13. The IEP meeting reconvened on December 7, 2018. At the meeting:

a. Mother did not provide any feedback on present levels of performance or draft goals.

b. GRS staff was present by telephone. District Psychologist had provided draft goals to GRS.³¹² District Psychologist unsuccessfully attempted four times (2-3 times by email and over the phone) to gather more information from GRS staff about Student's present level levels of functioning and to review the draft goals.³¹³ GRS staff stated: "they would share written present levels with [Mother] and [Mother] will determine if she wants to share them with the District team."³¹⁴ GRS did receive the draft

³⁰⁵ SD16-31.

³⁰⁶ SD16-31.

³⁰⁷ SD16-31.

³⁰⁸ SD16-31.

³⁰⁹ SD16-31

³¹⁰ SD16-31

³¹¹ SD16-31.

³¹² District Psychologist testimony.

³¹³ District Psychologist testimony and SD16-29.

³¹⁴ SD16-29.

academic goals from [District] ██████████³¹⁵ Mother revoked the release to talk to GRS staff after this meeting.³¹⁶

c. During the meeting, the GRS Director reported that in general [Student] has been improving his peer relations, but had a setback and a removal from the classroom after placing a tack on another student's chair. Student was assigned to supervision in GRS Associate Director's office.³¹⁷ Mother's Attorney inquired about [Student's] response to the incident, which resulted in GRS Director sharing that [Student] has a tendency to lie and struggles to take responsibility, both of which occurred in this incident. District ██████████ Sped Teacher inquired about what precipitated the incident, and the response was GRS staff was unsure.³¹⁸

i. Mother's Attorney asked about the level of support Student receives above and beyond the typical GRS student. The GRS Director stated "[Student] has maxed out on their interventions."³¹⁹ The GRS Associate Director³²⁰ felt Student was doing well in the maxed out supports that GRS current offers to students.³²¹

d. GRS did not report on Student's social emotional needs because the representative felt they could not speak to those needs and Student's counselor was not present.³²²

e. The District drafted 2 executive functioning goals for Student. One was drafted by the Sped Teacher,³²³ and the District Psychologist drafted the other based on information provided by GRS.³²⁴ Both testified that while not agreeing with the GRS goals as drafted, they did present a starting point.³²⁵

i. Goal 1: "By his 2019-2020 annual review [Student] will have no more than 2 missing/late assignments on average in each of his classes as indicated by teacher reports."³²⁶ District

³¹⁵ GRS Associate Director testimony.

³¹⁶ District Psychologist testimony.

³¹⁷ Associate Director testimony and SD16-29. GRS Associate Director testified Student spent 1 ½ days with him as a result of this incident. Although GRS maintained a behavior log for Student, including minute details, e.g. "11/30/18 "It was reported [Student] threw a ball at peer." There is no record of this incident in the behavior log.

³¹⁸ GRS Associate Director testimony, SPED Teacher testimony and SD16-29.

³¹⁹ SD16-29.

³²⁰ Personally identifiable information is in Appendix A.

³²¹ SD16-34.

³²² District Psychologist testimony.

³²³ Sped Teacher and SD16-14.

³²⁴ District psychologist testimony and SD16-14. "According to the 2018-19 trimester progress report from GRS, [Student] has struggled to turn in assignments on time in a number of classes."

³²⁵ District Psychologist and SPED Teacher testimony.

³²⁶ District Psychologist testimony and SD16-14.

Psychologist wanted Student to focus on task completion.³²⁷ It was anticipated that there would be daily data collection through the data base tracking system,³²⁸ communication with teachers and meetings with case manager.³²⁹ Sped Teacher testified that using schoology, the staff is able to keep track of assignments daily and update grades weekly. This information can be provided to Student's learning strategies class to help bridge the gap. The staff can see all the data and see what is missing. Staff needs holistic data on missing assignments to determine possible integration into general education classes. Gen ed teachers are not forgiving about missing assignments.³³⁰

ii. Goal 2: "By his 2019-2020 annual review, as measured by individualized data points, [Student will remain focused on and on task for a period of 20 minutes with no more than 2 teacher/staff prompts throughout the class period."³³¹ This goal was drafted because it appeared to be one of the areas in which Student was struggling.³³² The goal was to be implemented using timers, breaks, chunking, and visual cues.³³³ The twenty minute period was determined because it represents ½ of a class period.³³⁴

f. The District drafted two reading comprehension goals:

i. Reading goal 1: "By his 2019-2020 annual review, after reading a short passage, [Student] will answer questions for who? What? When? Where? How? With 80% accuracy."³³⁵ This goal was drafted because GRW was currently working on this goal and it should be continued.³³⁶ Sped teacher would like to see this goal modified to include the common core rubric.³³⁷

ii. Reading goal 2: "By his 2019-2020 annual review, after reading a given story or short passage, [Student] will draw conclusions and predict outcome with 80% accuracy."³³⁸ This goal was also modeled on the GRS goal to continue providing Student with consistent services.³³⁹

³²⁷ District psychologist testimony.

³²⁸ Identified by Sped Teacher as Schoology.

³²⁹ District psychologist testimony.

³³⁰ Sped Teacher testimony.

³³¹ District Psychologist and SD16-16.

³³² District Psychologist testimony.

³³³ District Psychologist testimony.

³³⁴ Sped Teacher testimony.

³³⁵ District Psychologist testimony and SD16-18.

³³⁶ District Psychologist testimony.

³³⁷ Sped Teacher testimony.

³³⁸ District Psychologist testimony and SD16-20.

³³⁹ District Psychologist testimony.

g. Accommodations were agreed upon and Mother did not recommend any additional accommodations.³⁴⁰

h. It was noted Student's speech language services were removed by GRS. The District proposed to open a domain in this area and shared proposed domains with Mother for consideration.³⁴¹

i. SPED Teacher opined that it was hard to write goals when you have not been with the student, and that typically the staff would propose IEP amendments to goals based on a student's performance, approximately 30 days after student begins placement.³⁴²

j. The team stated there was insufficient data to determine Student's need for ESY and that the issue of ESY would be revisited in the spring.³⁴³

14. Mother stated she believed it was obvious what she wanted for [Student] - she wanted him to remain in the residential setting at GRS because she feels he needs that level of support.³⁴⁴ Three placement options were reviewed for Student: 1) residential; 2) therapeutic day school; and 3) alternative education program ("AEP"). The IEP team recommended Student's placement in the AEP program, which is a self-contained environment for Student to receive academic instruction as well as support for executive functioning deficits, behavioral incidents, and additional educational support. The District staff believed a residential placement was too restrictive and that the therapeutic program would not be able to offer Student peer role models. The team felt that during the transition period from a residential school to HPHS, Student would need additional support which could be provided in the AEP program, although it was felt that Student would be able to spend more time in the general education setting.³⁴⁵ Student would receive all education including learning strategies, math English reading, social studies, science and physical education within the AEP program.³⁴⁶ Related Services outside general education were counseling and speech/language services.³⁴⁷

³⁴⁰ District Psychologist testimony and SD16-22.

³⁴¹ SD16-30.

³⁴² SPED Teacher testimony.

³⁴³ SD16-30.

³⁴⁴ AS16-(29-30).

³⁴⁵ SD16-30.

³⁴⁶ SD16-26. Note: Sped Teacher testified that Student should have been scheduled for Reading Fundamentals, not reading essentials, and that this was an error which could be corrected by amendment.

³⁴⁷ SD16-26.

15. A copy of the finalized paperwork was immediately printed and provided to Mother and Mother's attorney, and they were given an opportunity to submit a parent dissent which could be attached to the IEP.³⁴⁸

E. District's Proposed Placement:

1. The AEP program is located within HPHS and consists of three certified special education teachers, four paraprofessionals, a school psychologist, a speech language pathologist,³⁴⁹ and a transition coach.³⁵⁰ The team meets at least twice a week to discuss issues and problem solve.³⁵¹

2. Each student is assessed individually. If a student can show they can meet the academic rigor and social emotional rigor of general education classes, students have access to all available courses (including advanced placement courses).³⁵² Unless there are specific restrictions, students can participate in HPHS clubs and sports. AEP students are taught by special education teachers and can have lunch either in the general population or with the special education students, determined by what would be appropriate for them.³⁵³

3. The AEP program has embedded therapeutic supports, including: 1) individual problem solving, where teachers attempt to establish relationships through redirection and discussion about appropriateness; and 2) peer problem solving (including peer mediation). A psychologist and a speech pathologist, who assist with pragmatic issues, are present. There is direct instruction on social pragmatics.³⁵⁴ District Psychologist works individually and in group with students on issues like social emotional growth and self-management.³⁵⁵

4. The AEP program works with oppositional behavior and helps students implement skills and provide consistency to avoid oppositional behaviors.³⁵⁶

³⁴⁸ SD16-30.

³⁴⁹ SPED Teacher testimony.

³⁵⁰ District Psychologist testimony.

³⁵¹ District Psychologist testimony.

³⁵² SPED Teacher testimony.

³⁵³ SPED Teacher and District Psychologist testimony.

³⁵⁴ SPED Teacher testimony.

³⁵⁵ District Psychologist testimony.

³⁵⁶ SPED Teacher testimony.

5. Students in the AEP program do not have a lot of high-level behaviors (loud yelling and physical manifestations). There are a significant number of low-level behaviors, including work refusal, shutting down, and attention seeking.³⁵⁷

6. The AEP team strives to communicate and form good relationships with parents, so that the team model is implemented both inside and outside of school.³⁵⁸

7. SPED Teacher has 20 years of experience as a special education teacher at the high school level.³⁵⁹ SPED Teacher reviewed the GRS behavior logs.³⁶⁰ He criticized the logs because they do not reveal the antecedent to the behaviors described.³⁶¹ The AEP program uses the Gestalt method for handling behavior, consisting of listening, defining, proposing solutions and repairing. This helps students model and understand how to handle issues. When students see the staff being fair and consistent, they model our ways. The AEP team is pro-active and the interventions are very successful.³⁶² SPED Teacher reviewed several incidents involving Student:

a. Student's August 6, 2018 behavior of smearing red ink across a desk.³⁶³ SPED Teacher did not find this behavior highly concerning for a high school student. Incidents like this happen and it could be an accident that could be resolved by a request to clean it up.³⁶⁴

b. The incident of September 24, 2018 was reviewed.³⁶⁵ The AEP program would handle a name-calling situation by gentle redirection. If redirection failed, a student would be directed to a quiet space room to cool down and discuss the process with staff; cooling down is essential because a student would need to be in a better place cognitively to participate in a discussion.³⁶⁶ If a discussion failed, the matter could be called into peer mediation.

c. On October 23, 2018, Student received a detention for being disruptive and cursing. SPED Teacher did not consider this unusual behavior.

³⁵⁷ SPED Teacher testimony.

³⁵⁸ SPED Teacher testimony.

³⁵⁹ SPED Teacher testimony.

³⁶⁰ SD48.

³⁶¹ SPED Teacher testimony.

³⁶² SPED Teacher testimony.

³⁶³ SD48-15.

³⁶⁴ SPED Teacher testimony.

³⁶⁵ SPED Teacher testimony.

³⁶⁶ SPED Teacher testimony.

d. SPED teacher believes sexual promiscuity among high school peers is very common and developmentally appropriate.³⁶⁷

8. Student behaviors do affect proposed placements. The only behaviors which would exclude a student from the AEP program would be behaviors so significant that the program could not provide for the safety of the students or the community.³⁶⁸ The criteria does revolve around safety, which is multifaceted and would include self-harm (student can't be left alone).³⁶⁹

9. HPHS's AEP program is capable of addressing Student's unique needs in: 1) executive functioning skills; 2) reading comprehension; 3) Strategies/recommendations of GRS (which SPED Teacher testified were fairly common and could be implemented);³⁷⁰ 4) provide all supplementary aids, accommodations and modifications specified in Student's Educational Accommodations and supports.³⁷¹ The technology might change but the supports and accommodations would be essentially the same.³⁷²

10 Mother toured the AEP at HPHS with the Director. She was there approximately 1 ½ hours.³⁷³ Mother did not understand the program and was concerned that the program was too restrictive, because the location of the program was separated from the general education portion of the building. Mother felt Student would be at HPHS but would not be part of the HPHS community.³⁷⁴ Mother did not understand what Student's school day in this program would look like and felt no one provided a clear statement whether Student would be able to attend gym and lunch with the general education students.³⁷⁵

11 Student was described as a character, makes you smile, is loving, caring, smart, and complex (one minute wise beyond his years, the next minute a child).³⁷⁶ Student loves sports, both to watch and participate.³⁷⁷

12 Student has weaknesses and is described by his Mother as his own worst enemy. Student has issues socially, staying on task, being organized and in reading and writing.³⁷⁸ Student has difficulty

³⁶⁷ SPED Teacher testimony.

³⁶⁸ SPED Teacher testimony.

³⁶⁹ SPED Teacher testimony.

³⁷⁰ SPED Teacher testimony and SD48-8.

³⁷¹ SPED Teacher testimony and SD16-22.

³⁷² SPED Teacher testimony.

³⁷³ Director testimony.

³⁷⁴ Mother testimony.

³⁷⁵ Mother testimony.

³⁷⁶ Mother testimony.

³⁷⁷ Mother testimony.

³⁷⁸ Mother testimony.

initiating and maintaining friendships, misreads others social cues, and does not appropriately interact with others.³⁷⁹

F. GRS School

1. Student began school at GRS on July 18, 2018, coming directly from CCBS.³⁸⁰ Student returned home from GRS on August 17, 2018 (end of summer program) and Student returned to GRS on September 6, 2018.³⁸¹

2. GRS is a hybrid school; it is a residential treatment center and college prep. GRS has 116 residential beds and 16 post graduate beds.³⁸² For the 2018-19 school year there were 15-30 freshman, and a typical classroom size is 4-10 students.³⁸³ GRS has a regular academic track level with advanced placement courses. There are remedial English courses.³⁸⁴ Student was in regular track 9th grade courses and did not participate in the remedial English courses.³⁸⁵ GRS is approved by the Illinois State Board of Education.³⁸⁶

3. Every student receives the same support staffing - a case manager/advisor and access to an on campus psychiatrist, clinician, IEP case manager and dorm staff.³⁸⁷ Students participate in group therapy and have access to sports teams and clubs.³⁸⁸ GRS has extended school day (2 hours) where students are encouraged to attend for extra help, and routine study hall from 7:30 p.m. - 9:00 p.m. (Monday-Friday).³⁸⁹ Student received 45 minutes per week of individual therapy and one 50-60 minute group session.³⁹⁰

4. GRS uses the TCI/Cornell Method for behavior management (relational model), which is 80% verbal management. It is a non-punitive program based on the concept that by being with healthy people you will model them and be healthy, e.g. a student who misbehaves must spend time with adults.³⁹¹ The administrators are trained in TCI restraints.³⁹² Student was never restrained.³⁹³ Detention, in many cases,

³⁷⁹ Mother testimony.

³⁸⁰ P130 and FOF C.13.

³⁸¹ Mother testimony.

³⁸² GRS Associate Director testimony.

³⁸³ GRS teacher testimony.

³⁸⁴ Student did not participate in any remedial English courses. Testimony of GRS Teacher.

³⁸⁵ GRS Associate Director testimony.

³⁸⁶ P-149.

³⁸⁷ GRS Associate Director testimony.

³⁸⁸ GRS Associate Director and GRS teacher testimony.

³⁸⁹ GRS teacher testimony.

³⁹⁰ GRS Associate Director testimony.

³⁹¹ GRS Associate Director testimony.

³⁹² GRS Associate Director testimony.

³⁹³ GRs teacher testimony.

is thought to be punitive.³⁹⁴ In response to misbehavior incidents, Student would be made to spend time with a teacher/advisor talking about the incident. This would include spending an entire day with the teacher/advisor.³⁹⁵

5. When Student registered, GRS was provided with an intake summary, which included all works of other professionals who provided services to Student.³⁹⁶ Upon arrival at GRS, Student was described as sweet, young and capable; struggling with social situations; limited in the classroom; and with significant executive functioning issues.³⁹⁷ Student was motivated to do well, but the social deficits came through. Student desperately wanted to connect to peers, and be part of the world.³⁹⁸ Student struggled academically due to misbehaviors both during and after class.³⁹⁹ Student responds well to adults in a 1-1 situation, but struggles with peers, especially in a group situation.⁴⁰⁰

6. Student's social emotional progression was described as slow, his ability to recognize and solve a social problem was limited/poor, he does not recognize the effect of his behavior on others and does not feel embarrassment.⁴⁰¹

7. Student is not an accurate reporter and has a significant history of lying.⁴⁰²

8. In September of 2018, Student was provided with an academic services plan, which is used to develop services similar to an IEP. The plan included:

a. Student was working on improving daily functioning; emotional regulation skills; self-esteem; academic functioning; peer relationships; family relationships; coping skills; social skills; health and wellness; and decreasing negative thought patterns; and increasing motivation and follow-through.⁴⁰³

b. Student was to receive 32.5 instructional hours per week, up to 2 hours (two 45-minute sessions) of individualized psychotherapy per week, clinical consultations as needed, weekly group

³⁹⁴ GRS Associate Director testimony.

³⁹⁵ GRS Associate Director testimony.

³⁹⁶ GRS Associate Director testimony.

³⁹⁷ GRS Associate Director testimony.

³⁹⁸ GRS Associate Director testimony.

³⁹⁹ GRS teacher testimony.

⁴⁰⁰ GRS Associate Director testimony.

⁴⁰¹ GRS Associate Director testimony.

⁴⁰² GRS Associate Director testimony.

⁴⁰³ GRS Associate Director testimony and P26-13.

meetings with dormitory peer group and residential administrator and counseling with advisor as needed. This is the complete list of Student's services.⁴⁰⁴ Student received no special services.⁴⁰⁵

c. Student received a comprehensive seizure plan.⁴⁰⁶

d. There is a list of strategies which the GRS Assistant Director described as comprehensive, but are specified on the face of the document as "Standard strategies used in the [GRS] treatment process" and which is followed by a generalized list of 16 strategies.⁴⁰⁷ The only "mandated" accommodations were: use of computer for longer assignments, use of calculator, preferential seating, proximity teaching/frequent check-ins, consistent daily routine, use of planner, break down long assignments.⁴⁰⁸ Informal accommodations might have included topic sentences and test retaking.⁴⁰⁹

e. Student's learning profile includes test data from the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V) and Woodcock-Johnson Tests of Achievement-Fourth Edition (WJ-IV). The information provided is solely the scores for the testing and does not provide when or where the testing was completed nor who administered the testing.⁴¹⁰ GRS Teacher testified this was the testing before GRS.⁴¹¹

f. Student concerns were drafted from a previous unspecified document and GRS Teacher's observations.⁴¹² Student's academic learning issues, specified on Student's Learning Profile, were typed by GRS Teacher from an unknown document sent to GRS and the GRS intake form.⁴¹³ The academic/learning issues specified were:

1. Autism spectrum disorder, mild, without intellectual impairment, with early language impairment;
2. Attention deficit hyperactivity disorder (OADHD, Inattentive);
3. developmental coordination disorder;
4. Language disorder;
5. Learning disorder with impairment in reading;

⁴⁰⁴ GRS Associate Director testimony and P26-13.

⁴⁰⁵ P-26-13.

⁴⁰⁶ GRS Associate Director testimony.

⁴⁰⁷ P26-14.

⁴⁰⁸ GRS Teacher testimony and SD26-23/SD48-8.

⁴⁰⁹ GRS Teacher testimony.

⁴¹⁰ P26-20/SD48-4.

⁴¹¹ GRS Teacher testimony.

⁴¹² GRS teacher testimony and P26-21/SD48-6.

⁴¹³ GRS Teacher testimony and P26-21/SD48-6.

6. Learning disorder with impairment in written expression, by history.

7. Generalized anxiety disorder, by history.⁴¹⁴

9. Student's goals as specified in the March 2019 services plan provided:

a. There were three social/emotional goals: 1) [Student] will increase his awareness of others, with two objectives, all of which are shown as limited progress;⁴¹⁵ 2) [Student] will increase his coping skills, with three objectives, all of which are shown as limited progress;⁴¹⁶ and 3) "[Student] will increase his decision making skills, with three objectives, all of which show limited progress."⁴¹⁷

b. There were three academic goals: The Goal labeled 4 states: "[Student] will increase his executive functioning skills, with four objectives. In March 2019 3 of the objectives are listed as in progress and one is limited progress."⁴¹⁸ Goal labeled 5 states: [Student] will improve his reading comprehension skills, with five objectives, all of which are in progress as of March 2019.⁴¹⁹ Goal 5 also states: [Student] will improve his writing skills, with 5 objectives, all of which are in progress as of March 2019.⁴²⁰

c. Student did not receive any speech language services.⁴²¹ There were no embedded speech/language and no speech language goals.⁴²² Also, no goals about peer relationships.⁴²³

10. There was no data collection on goals, it was purely subjective.⁴²⁴ Student's teachers would report to GRS Teacher, who would interpret the information and assign a progress key to the objective.⁴²⁵ All of Student's teachers were general education teachers.⁴²⁶ GRS Teacher did not teach Student in any classes, with the exception of a substitute position for several weeks in December 2018.⁴²⁷ GRS Teacher was not on Student's treatment team.⁴²⁸

⁴¹⁴ P26-21.

⁴¹⁵ GRS Associate Director testimony; he wrote goal and P26-18.

⁴¹⁶ GRS Associate Director testimony; he wrote goal and P26-18.

⁴¹⁷ P26-19.

⁴¹⁸ P26-21

⁴¹⁹ P26-22.

⁴²⁰ P26-22.

⁴²¹ GRS Teacher testimony.

⁴²² Mother testimony.

⁴²³ Mother testimony.

⁴²⁴ GRS Teacher testimony.

⁴²⁵ GRS Teacher testimony.

⁴²⁶ GRS Teacher testimony.

⁴²⁷ GRS Teacher testimony.

⁴²⁸ GRS Teacher testimony.

11. Student worked in structured study hall daily. GSA Teacher worked with him on English, social studies, reading comprehension, writing and psychology.⁴²⁹ In psychology, Student needed 1:1 assistance. Science was above Student's level. GSA Teacher testified that Student's teachers did not scaffold.⁴³⁰

12. During his residency at GRS, Student exhibited a significant number of discrepant behaviors.⁴³¹ No behavior intervention plan was ever developed to address Student's behavior, no data was collected on what triggers Student's behavior, and Student was not given a functional behavior assessment.⁴³²

13. District Psychologist did not feel GRS was appropriate; she questioned their interventions and felt GRS did not provide Student with opportunities in his least restrictive environment.⁴³³

14. On March 8, 2019, Mother reported contacted GRS staff to advise them Student was "hooking up" with a peer.⁴³⁴ Mother testified that Student left GRS because of issues with another student.⁴³⁵ Student left GRS on suspension,⁴³⁶ and on March 15, 2019, a letter was sent to the Mother from GRS executive director which states in pertinent part:

"After much thought and collaboration with [Student's] team, we recommend that it would be to [Student's] benefit for him to transition to another program. While we are not terminating his enrollment at GRS and he can remain here, we firmly believe that he needs an alternate setting more targeted to his unique challenges." "We believe [Student] requires a program that provides the same or greater supervision than [GRS] but also has a more comprehensive structure to be tolerant and understanding of this issue." "A different environment with students who are less socially sophisticated combined with the needed adult supports and small/structured environment should enhance his opportunity to connect with peers his age." "Lastly, GRS has close to 140 students. Through our time working with [Student], we believe that an even smaller, more structured program with a small staff to student ratio will also help him thrive. A smaller program that will focus on both his educational and social/emotional challenges seems like a better fit for a young man who needs considerable attention and supervision."⁴³⁷

⁴²⁹ GRS Teacher testimony.

⁴³⁰ GRS Teacher testimony.

⁴³¹ GRS Associate Director and SD48-(15-28).

⁴³² GRS Associate Director testimony.

⁴³³ District Psychologist testimony.

⁴³⁴ SD48-8.

⁴³⁵ Mother testimony.

⁴³⁶ SD48-8. GRS Associate Director testified that Student was not suspended, this was a clerical error.

⁴³⁷ P26-100-101.

This was classified as a recommendation, not a termination, and Student would still be welcome at GRS.⁴³⁸ GRS Associate Director agreed with this letter.⁴³⁹

15. Student transferred to BRS, another residential school. This placement is not at issue in this hearing.

REIMBURSEMENT COSTS:

1. Mother has provided testimony and documentation in support of her request for tuition reimbursement.

a. Tuition at GRS, \$11,650.00 per month.⁴⁴⁰ Per diem cost at GRS \$402.88⁴⁴¹ Mother testified she paid a total of \$87,390.32 to GRS. No paid receipts from GRS were provided.

2. Mother has provided testimony and documentation in support of her request for travel expenses and related costs.

b. Travel expenses for the move-in period, July, 2018, totaled \$1,347.79. Summer break expenses, \$755.90. School break, August, 2018, totaled \$755.9 (\$322.50 to Chicago/\$433.40 from Chicago⁴⁴²). School visit, September 2018, totaled, \$1,268.42⁴⁴³. Parent's weekend, totaled \$746.19.⁴⁴⁴ Thanksgiving totaled \$773.40.⁴⁴⁵ Winter Break totaled \$704.60 (\$417.20⁴⁴⁶ to Chicago and \$367.40⁴⁴⁷ return). and Parent's Weekend totaled, \$586.56.⁴⁴⁸

CONCLUSIONS OF LAW AND DISCUSSION OF THE ISSUES

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

Issue One: Whether Student was denied a Free Appropriate Public Education ("FAPE") when the District allegedly failed to timely develop an IEP

⁴³⁸ GRS Associate Director testimony.

⁴³⁹ GRS Associate Director Testimony.

⁴⁴⁰ P129-(1-9).

⁴⁴¹ P129-1.

⁴⁴² P130-7.

⁴⁴³ P130-(9-13) and P130-14.

⁴⁴⁴ P 130-(15-19).

⁴⁴⁵ P130-(19-21).

⁴⁴⁶ P130-22.

⁴⁴⁷ P 130-(23-24).

⁴⁴⁸ A chart of expenses with receipts are present in P130.

between Student's date of enrollment in the District (June 7, 2018) and December 7, 2018.

The IDEA is designed “to ensure that all children with disabilities have available to them a free and appropriate public education (“FAPE”) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, an independent living.” 20 USC §1400(d)(1)(A). In order to implement this goal, the IDEA provides for an evaluation of disabled children and the development of an individualized education program (“IEP”) for the disabled child which is developed, reviewed and periodically revised per the child’s special education needs. §1400(d)(1)(A)(1). 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 (1985).

“No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.” 34 CFR §137(a). *See also Florence County Sch. Dist. 4 v. Carter*, 510 U.S. 7 (1993). However, when a child with a disability is withdrawn from a public school and enrolls in a private school, that child remains eligible for special education and related services, and if the child then “re-enrolls in the public school, the local educational agency has an obligation to convene an IEP meeting and develop an appropriate IEP for the child.” *Letter to Goldman*, 53 IDELR 97, p. 2 (OSEP 2009) (citing 34 CFR § 324 (a)). *See also* 64 Fed. Reg. 12,601 (1999). And when such a disabled child re-enrolls and public school, a reevaluation of the child may be necessary if the district

“determines that the educational and related services needs ... of the child warrant a reevaluation.” 34 CFR § 303 (a) (1); *Goldman*, 53 IDELR 97, p. 2

The determination of FAPE and the appropriateness of an existing IEP, or the development of the new IEP, for a disabled child transferring into a local school district is governed by 20 USC §1414(d)(2)(C) and the Illinois Administrative Code 23 Ill Admin. Code § 226.50. First, to facilitate the transfer, “a new school in which the child enrolls shall take reasonable steps to promptly obtain a child’s records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled.”

§1414(d)(2)(C)(ii)(I). On this issue, the Ill Administrative Code requires a new school district located in Illinois to request the child’s records, including the IEP, from the child’s previous district “by the end of the next business day after the date of enrollment.” 23 Ill Admin. Code §226.50(a)(2)(B). If the new school district in Illinois does not receive a disabled child’s IEP from his or her previous district, or receive the previous district’s written or oral confirmation of the requirements of the IEP, at the time “the child is presented for enrollment, the child shall be enrolled and served in the setting that the [new] district believes will meet the child’s needs until a copy of the current IEP is obtained or a new IEP is developed by the school district.” 23 Ill Admin. Code §226.50(a)(2). If the new school district intends to develop an IEP for the child, the district has 20 days from the date it requested the child’s records from the previous district to provide written notice to the parent of an IEP meeting. 23 Ill Admin. Code §226.50(a)(2)(C), 105 ILCS 5/2-1.13a(a). If the district determines the child should be evaluated as part of the development of the new IEP, the district has 60 school days from the date the child’s parent signs a consent to

perform the needed assessments complete the assessments and hold an IEP meeting. 23 Ill Admin. Code §226.110(d).

Procedural Violations

Initially, Mother argues a procedural violation under 23 Ill. Admin. Code §226.50, claiming that the District failed to timely request Student's records from district [REDACTED] following Student's June 7, 2018 registration, and failed to offer or provide ESY services to Student. Mother is requesting to be reimbursed for the unilateral placement of Student at a private residential school beginning on July 18, 2018.

No evidence was presented that Student qualified for ESY services. Student's December 2017 IEP provided for ESY services,⁴⁴⁹ but Mother challenged the IEP at a due process hearing, and presented no evidence that the due process settlement included ESY services for Student. Student's April 25, 2018 CCBS services plan did not provide for ESY.⁴⁵⁰ Unless there is an IEP or Services plan specifically providing for ESY services, the Student is not entitled to receive those services.⁴⁵¹

The fact driven timeline for this case is critical to the analysis. District [REDACTED] offered a summer school program, including ESY, from June 11, 2018 to July 20, 2018. Registration for the summer program was limited and began on February 21, 2018.⁴⁵² Mother did not follow the procedures to complete the online registration for summer program, or the procedures to contact the Director to arrange ESY services. Further, even if the general registration is determined to be a request for summer services, Mother did

⁴⁴⁹ FOF B-3d

⁴⁵⁰ FOF B-5

⁴⁵¹ 34 CFR §300.309(a)(2) provides: Extended school year services must be provided only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child.

⁴⁵² FOF C-2.

not complete the enrollment process by providing proof of residency until after June 22, 2018,⁴⁵³ thereby frustrating any opportunity for Student to participate in summer programming at District [REDACTED]

The District's online registration did not ask whether a student being registered had an IEP or a 504 plan. This omission meant that District [REDACTED] had no way of distinguishing special education students from general education students. There was no inquiry on the residency documentation about a student's educational status. Mother voluntarily disclosed that Student was at CCBS, an out of state school, even though she had no obligation to provide this information. By its own oversight, at the time Student's enrollment was completed, the District had no basis to comply with record procedures related to students with a disability. To its credit, given the limited amount of information it requested from enrolling students, the District did request some records directly from Mother.⁴⁵⁵ Further frustrating the registration process, rather than responding directly to the District, Mother chose to have her attorney send Student's evaluation (without the addendum) on June 27, 2018 to an attorney working at the law firm known to represent District [REDACTED]. The email did not specify that Student had a current IEP, and merely requested an IEP meeting to discuss the current evaluation.⁴⁵⁷ The urgency of the request for services was further obscured by Mother's Attorney's representation that Mother wanted to discuss Student's fall placement.⁴⁵⁸ There was no mention of ESY services and no

⁴⁵³ FOF C-3

⁴⁵⁴ It appears that Mother had no intention of having Student participate in ESY services at District [REDACTED]. The evidence has shown that District's summer program ran from June 11 to July 20, 2018 and Student did not graduate from CCBS until July 17, 2018. No evidence was presented to support the allegation that Mother intended to return Student to District [REDACTED] in time to participate in the ESY program.

⁴⁵⁵ FOF C-5

⁴⁵⁶ FOF C-6, C-7

⁴⁵⁷ FOF C-5.

⁴⁵⁸ FOF C-5

IEP was provided. At the time of this email, there was no due process case pending and nothing would have prevented Mother or her Attorney from responding directly to the appropriate representatives at the school district.

On or about June 28, 2018, however, when the Director received an email from District's Attorney regarding this Student, District █████ was put on notice that Student might be a student with a disability and entitled to the protections afforded students with educational disabilities. The fact that the Director was unaware that Student had an IEP on this date did not negate the District's obligation to request Student's records, including an IEP from district █████ by the end of the next business day (June 29, 2018). District █████ failed to make this request. In response, the District has argued that Student did not have an "active" IEP in place in June 2018. But this argument presumes that the District had Student's IEP on June 28, 2018 and knew the contents and history of the IEP, which the District has denied. I find that the District failed to timely request Student records and that this failure is a procedural violation.

Parent next argues that the District committed a procedural violation when it failed to convene an IEP meeting to adopt the Student's former IEP or to seek to develop a new IEP within twenty days after Student was presented for enrollment. Under Illinois law, the District should have requested Student's IEP on June 29, 2018. Had the District complied, district █████ would have had ten calendar days to comply with the request (July 9, 2018)⁴⁵⁹. After July 9, 2018, District █████ had ten days to provide written notice to the parent of an IEP meeting for the purpose of developing a new IEP.⁴⁶⁰ Mother initiated the attorney discussions, not the District, thus circumventing the District procedures, and the

⁴⁵⁹ 105 ILCS 5/2-3.13a.

⁴⁶⁰ 23 Ill Admin. Code 226.50(a)(2)(C).

District's Attorney notified Mother's Attorney on July 10, 2018 that an IEP meeting was necessary to discuss Student's placement.⁴⁶¹ A series of attorney emails culminated in the District notifying Mother's Attorney on July 16, 2018 that an IEP meeting was scheduled for August 16, 2018 at 12:00 p.m.,⁴⁶² meeting the requirements of the Illinois Administrative Code. This was not a procedural violation.

However, a school district must have an IEP in place for each child with a disability within its jurisdiction at the beginning of each school year (20 USC § 1414(d)(2)(A)), and a failure to do so is a procedural violation under the IDEA. *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 67 (3d Cir. 2010). But a school district's failure to comply with the IDEA's procedural requirements does "not automatically require a finding of a denial of FAPE." *Ross*, 486 F.3d at 276. "Procedural violations can be held to deny a student a FAPE only if they (I) impeded the child's right to a free and appropriate public education; (II) significantly impeded Plaintiffs' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to Plaintiffs' child; or (III) caused a deprivation of educational benefits." *James v. Bd. of Educ. of Aptakisis-Tripp Dist.* 102, 642 F.Supp.2d 804, 816 (N.D. Ill. July 22, 2009) (quoting 20 U.S.C. Sec. 1415(f)(3)(E)(ii)). In instances where the district failed to have an IEP in place for disabled child on the first day of school, but where the child was unilaterally placed in a private school before classes started in the district, courts have found that, because the child had not attended classes in the district before removal, there could be no evidence of deprivation of educational benefits to the child and therefore no deprivation of FAPE. *Henlopen*, 606 F.3d at 69-70.

⁴⁶¹ FOF C-9

⁴⁶² FOF c-13a

This case is unique as it involves a Student who was unilaterally placed by Mother in an out-of-state residential school, and who remained in this placement pursuant due to a due process settlement agreement with a prior district (district ██████ Student was then registered, during the summer, in a new public school district (█████) and to a new educational level (8th grade to high school). Additionally, not only are the settings where the services might be delivered substantially different, but it is likely that the range of classes/programs, accommodations and services potentially available at a high school level will be different than those services available at a small private residential middle school. In Letter to Siegel, 74 IDELR 23, 110 LRP 6129 (2019). OSEP responded to a similar situation by pointing out that, although 20 USC 1414(D)(2)(c) does not specifically address a situation where a child transfers during the summer, IDEA requires that at the beginning of each school year each LEA, State educational agency, or other State agency, must have in effect for each child with a disability an IEP (citing 20 USC 1414(d)(2)(A) and 34 CFR §300.323), and concluded that public agencies must ensure that an IEP is in effect at the beginning of the school year for children who move into a new public agency during the summer.

Mother alleges that the District's actions/inactions in failing to request Student's district ██████ records, and in failing to request to evaluate Student prior to the August 16, 2018, caused unnecessary delays and ultimately left Student without an educational placement for the fall semester 2018. The District has alleged that Mother could have been cooperative, provided all of Student's records to District ██████ and given the District access to CCRS and GRS staff to discuss Student's educational needs.

District ██████ has offered no justification for its failure to timely request records, nor any explanation for why, in the interim period between June 29, 2018 and August 14, 2018,

it failed to request student records from district [REDACTED]. The law places the obligation to obtaining the Student's records on the District, and although Mother did not voluntarily proffer records, there is no evidence that Mother refused to cooperate or interfered with this process. Mother, through her Attorney, volunteered some Student records, and was cooperative.⁴⁶³ District [REDACTED] never requested Mother provide any additional records, never requested Mother provide a copy of Student's IEP, and never verified with Mother whether it had gathered all of the Student's records. There was no testimony that Mother refused a records request. On the contrary, at the November 15, 2018 IEP meeting, when it was determined that the District did not have the Create addendum, Mother's Counsel offered to provide it for consideration. Although District staff were in contact with Mother, no one requested Mother provide records.

The District's August 1, 2018, IEP notice specifies that the meeting was called in order to discuss Parent's unilateral placement.⁴⁶⁴ The development of domains or an IEP was not listed on the notice. The IEP meeting was held on August 16, 2018. Just prior to this meeting, August 14, 2018, the District determined that it did not have the Student's IEP,⁴⁶⁵ and only had Student's private neuropsychological evaluation (January-February 2018) and a few records from CCBS. Although the District knew that it had a legal obligation to have an IEP in place for each child with a disability within its jurisdiction at the beginning of each school year, the District made no attempt to draft an IEP, or offer a placement using the information that was available.⁴⁶⁶ Rather, the District determined it did not have sufficient information and requested to evaluate Student through a Student

⁴⁶³ FOF C-5

⁴⁶⁴ FOF c-16

⁴⁶⁵ FOF C-18

⁴⁶⁶ It is noted that the same information available at this IEP meeting, forms the basis for the eligibility meeting and drafting of IEPs.

interview (no additional assessments were deemed necessary) and a review of updated medical records. Although the District did not notify Mother of its intent to propose an evaluation and discuss domains, the Mother's Attorney cooperated by agreeing to review domains at the IEP meeting,⁴⁶⁷ and after some negotiation, on August 31, 2018, the Mother consented to allow the District to conduct the evaluation.⁴⁶⁸ The domains requested required no additional educational testing of Student, only a record review or interview. Student's interview was completed by the District Psychologist on September 4, 2018. In sum, I find that the District did not comply with the procedures set forth in IDEA and the Illinois Statutes.

As noted, procedural violations can deny a student a FAPE if violations deprived the Student of educational benefits. A review of the evidence makes clear that the District's procedural violations set forth above deprived Student of educational benefits. District ██████'s first day of student attendance for school year 2018-2019 was August 20, 2018.⁴⁶⁹ On August 20, 2018, Student could not attend school at District ██████ because the District did not make any provision for Student's attendance: Student had no IEP, no educational placement, and no curriculum schedule. If Mother had not proactively arranged for Student to return to the unilateral placement, Student would have had no educational placement for the fall of 2018. Having no IEP and no educational placement deprived Student of educational benefits, and the District's reliance on the fact that Mother had a private placement available for Student does not mitigate this fact. In sum, I find that the District's procedural failures of not having an IEP or an appropriate educational placement in place for Student on August 20, 2018 amounted to a denial FAPE, and that denial of

⁴⁶⁷ FOF D-1a

⁴⁶⁸ FOF D-4

⁴⁶⁹ FOF D-1d

FAPE continued until the District drafted the Student's December 7, 2018 IEP which offered Student placement in the AEP program.

Issue Two: Did the District have an obligation to offer Student a FAPE between June 7, 2018 and the date of the Parent's unilateral placement in a private residential therapeutic day school on July 18, 2018, and if so:

i. Was the Parent's unilateral placement of Student at GRS appropriate?

ii. Do the equities weigh in favor of ordering the District to reimburse Parent for the cost of private school or are the equities a factor in determining the amount of the reimbursement.

As previously determined the District did not have an obligation to offer Student a FAPE until the first day of attendance for the new school year, August 20, 2018.

Therefore, there will be no order for reimbursement for the educational period July 18, 2018 to August 19, 2018.

However, for a violation of FAPE, the Mother is seeking reimbursement for her unilateral placement of Student at GRS. Since it is the finding of this IHO that the denial of FAPE did not begin until August 20, 2018, the analysis to determine if reimbursement for the unilateral placement will start on that date.

The courts have crafted a multi-part test to determine if a parent is entitled to reimbursement for the unilateral placement of a child. The first inquiry is whether the school district had failed to make a FAPE available to the child in a timely manner prior to that enrollment. 20 USC § 1412(a)(10)(C)(ii). See also, 34 CFR § 33.148(c); *Jenna R. P v. City of Chicago School District No. 229*, 114 LRP 4 (Ill. 1st Dist. 2013). To determine if the school district

has provided a FAPE to the child, the two-prong test under *Bd. of Education v. Rowley*, 458 US 176, 206-207 (1982) must be applied here.

The first prong under *Rowley* is whether the State complied with the procedures set forth in the Act. *Bd. of Education v. Rowley*, 458 US 176, 206-207, See also, *Beth B. v Van Clay*, 282 F.2d 493 (7th Cir.2002). The second determination under *Rowley* is whether the individualized educational program developed through the Act's procedures is reasonably calculated to enable the child to receive educational benefits. For a procedural violation, the violations must have impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provisions of a FAPE to the child or caused a deprivation of educational benefits. 20 USC § 1415(f)(E)(ii)(I-II).

Mother notified the District on July 2, 2018 that, if the District failed to provide an offer of FAPE to Student, she will make a unilateral placement of Student in a residential school.⁴⁷⁰ The Mother was under the mistaken belief that Student was entitled to ESY services and that those services could extend throughout the entire summer. However, this parental error gave the District an opportunity to ensure that it could offer Student an IEP and placement beginning for school year 2018-19. The District essentially was provided with not 10 days to provide FAPE, but in excess of 45 days (from July 2 to August 20, 2018). The District failed to take advantage of this opportunity. Parent did not send a second notice of unilateral placement to the District, but the District was aware that the Student was attending GRS, the District Psychologist even discussed Student's placement at GRS with Student.⁴⁷¹ To allow the District to avoid a request for reimbursement, when it failed to offer Student a FAPE, by finding that the Mother should have provided a second

⁴⁷⁰ FOF C-9

⁴⁷¹ FOF D-5

unilateral placement notice and given the District another 10 days to attempt to provide FAPE is unreasonable. I therefore find that the Mother's notice of unilateral placement on July 2, 2019 was proper.

The second inquiry is whether the private placement was appropriate. The private placement only has to meet the minimum standard of appropriateness under the IDEA. *See, Florence County School District Four v. Carter*, 510 U.S. 7, 20 IDELR 532 (1993). In *Burlington School Committee v. Mass. Dept. of Ed.*, 471 U.S. 359, 556 IDELR 389 (1985), the Court held that school districts can be required to reimburse parents for their private special education expenses if the unilateral placement, rather than the IEP, is proper under the IDEA. A potential placement may be found appropriate even if the placement does not meet the state standards that apply to SEAs and LEAs. 34 CFR § 300.148.

The Seventh Circuit has not laid out a clear rule defining appropriate or proper unilateral placement. *I.W v. Lake Forest High Sch. Dist. No. 115*, No. 17 C 7426 (N.D. Ill. February 7, 2019). In *I.W.*, the District Court for the Northern District of Illinois looked to the 2nd Circuit court of Appeals for guidance, and cited language directly from *Gagliardo v. Arlington Cent.Sch. Dist*, 489 f. 3d 105, 112 (2nd Cir 2007) to rule on appropriate placement: "[T]he same considerations and criteria that apply in determining whether the school district's placement is appropriate should be considered in determining the appropriateness of the parents' placement...[T]he issue turns on whether a placement - public or private - is reasonably calculated to enable the child to receive educational benefits." *I.W.*, 17 C7427, p. 17. Unlike public schools, private placement "need not meet state education standards or requirements," (*Frank G.*, 459 F.3d 356, 364 (2nd Cir. 2006) (*citing Florence Cty. Sch. Dist. Four v. Carter By & Through Carter*, 510 U.S. 7, 14 (1993)), nor "provide certified special education teachers or an IEP for the disabled student." *Frank*

G., 459 F.3d at 364. The Second Circuit has also explained that "parents [are] not required ... to prove that the 'private placement furnishes every special service necessary'" for the student. *C.L. v. Scarsdale Union Free Sch. Dist.*, 744 F.3d 826, 839 (2d Cir. 2014) (quoting *Frank G. v. Board of Educ. of Hyde Park*, 459 F.3d 356, 365 (7th Cir. 2006)). The Third Circuit agrees: "the test for the parents' private placement is that it is appropriate, and not that it is perfect." *Warren G. ex rel. Tom G. v. Cumberland Cty. Sch. Dist.*, 190 F.3d 80, 84 (3d Cir. 1999).

GRS is an ISBE approved school.⁴⁷² Much like the AEP program at HPHS, GRS maintains a small classroom size and provides students with additional supports in addition to the education environment.⁴⁷³ GRS uses a behavior management model not unlike the District's AEP therapeutic supports.⁴⁷⁴ Although the teachers are not special education teachers, because the classes provided are general education classes, special education teachers are not required.⁴⁷⁵ GRS recognized that Student was motivated to do well, but was held back by his social deficits.⁴⁷⁶ GRS did attempt to address these deficits, in addition to executive functioning and reading deficits.⁴⁷⁷ Even though District Staff questioned the lackadaisical approach to data collection on goals,⁴⁷⁸ the District ■ IEP team members recognized the value of the GRS goals when using those same goals to model draft goals for the Student's IEP.⁴⁷⁹

⁴⁷² FOF F-2.

⁴⁷³ FOF E-2 and F-3

⁴⁷⁴ FOF E-3 and F-4

⁴⁷⁵ FOF F-2.

⁴⁷⁶ FOF F-5.

⁴⁷⁷ FOF F-9.

⁴⁷⁸ FOF E-10.

⁴⁷⁹ FOF D-13e.

The District has argued that GRS was not an appropriate placement for this Student. The District SPED Teacher, criticized the behavior logs, which were not up to the standards which would be required in a public school setting.⁴⁸⁰ District Psychologist questioned GRS's interventions and lack of access to general education peers.⁴⁸¹ GRS Director admitted that although GRS did note that Student displayed discrepant behaviors, they did not collect data on the behaviors or attempt to develop a behavior plan.⁴⁸² GRS did lack services, such as speech pathology services, which Mother alleged during the District's IEP meetings that Student required.⁴⁸³ However, the private school setting is not required to be perfect and not required to provide the level of service to a student that a public school setting would have to provide.

Ultimately this placement was not successful for Student. As with many situations, each side has a clear vision of what they believe went wrong and they may not necessarily agree. GRS Director was credible when he testified that Student would still be welcome.⁴⁸⁴ I find that the Parent's unilateral placement of Student at GRS on September 6, 2018 was appropriate and meets the minimum standard of appropriateness under the IDEA.

The third inquiry in whether the amount of the reimbursement should be reduced or denied. 34 CFR § 300.148(d) provides the necessary criteria for that determination:

Reimbursement... may be reduced or denied:

- (1) If:
 - (i) At the most recent IEP team meeting that the parents attended prior to the removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement

⁴⁸⁰ FOF E-6.

⁴⁸¹ FOF E-13.

⁴⁸² FOF E-12.

⁴⁸³ FOF E-9c.

⁴⁸⁴ FOF 3-14.

proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

- (i) At least (10) business days (including any holidays that occur on a business day prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;
- (2) If, prior to the parents' removal of the child from the public school, the public school, the public agency informed the parents, through the notice of requirements described in 34 CFR 300.503(a)(a), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
- (3) Upon a judicial finding of unreasonableness with respect to actions taken by parents.

34 CFR §48(d).

Previously, I have determined that not only was Student not entitled to the ESY services for 2018, but Student did not complete the CCBS program until July 17, 2018, three days before the end of District [REDACTED]'s summer services. Consequently, I found no denial of FAPE and no reimbursement between July 18, 2018 and the last day of school for GRS. However, after the District failed to offer Student any District placement on August 16, 2018, I find that the July notice is proper and that Mother's actions in returning Student to GRS were not unreasonable. Consequently, I find that the Mother is entitled to reimbursement for tuition and expenses incurred during the period September 6, 2018 to December 8, 2018.

Issue Three: Whether the Student was denied FAPE when the District allegedly failed to conduct a timely and appropriate evaluation of Student pursuant to the IDEA.

The IDEA defines evaluation to mean the procedures used to determine whether a child has a disability and the nature and extent of the child's need for special education and related services. Those procedures must be in accordance with the requirements set forth at 34 CFR §300.304 - 34 CFR §300.311. 34 §CFR 300.15.

The evaluation under the IDEA serves two purposes: identifying students who need specialized instruction and related services because of an IDEA eligible disability; and helping IEP teams identify the special education and related services the student requires.

Pursuant to the Illinois School Code, the district has the burden of showing that "the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate, and available." 105 ILCS 5/14-8.02a(g-55).

A district cannot conduct an initial evaluation of a child suspected of having a disability without first obtaining informed parental consent. 34 CFR 300.300 (a)(1)(i). After reviewing and negotiating the domains with the District, Mother gave her approval for the District to reevaluate the Student in two domain areas.

The District Psychologist completed a review of the Student's Create report, she reported that she did not do any additional testing because her review of the psychological evaluation indicated that the evaluation was a full evaluation and she was concerned that additional testing so close together might nullify the results. Within the sixty days required by law, the District Psychologists evaluation was reviewed by a group of qualified professionals and Student's Mother and Attorney and was provided with a copy of the evaluation report and the documentation of determination. 34 CFR §300.306. The District also completed the medical evaluation, which was also reviewed timely at the same meeting.

At the meeting, the Parent provided additional school updates and reports which were reviewed.⁴⁸⁵ After consideration the team agreed to add the eligibility of autism to Student's IEP.

District argues that following the consent, it complied with the law and completed the evaluations and had the IEP team consider them within the 60-school day requirement.⁴⁸⁶ At the eligibility meeting the team not only gave consideration to District's evaluations, it gave consideration to other documents provided by Mother and ultimately agreed to change Student's eligibility. By a preponderance of the evidence, I find that the District has met its burden.

Issue Four: Whether the District's IEP of December 7, 2018 was appropriate.

- i. Did the District fail to provide timely notice of the topics to be discussed in advance of the IEP meeting?
- ii. Did the District fail to consider the input of private providers in the areas of a) Psychological evaluation, and Cherokee Creek Boys School and Grove School Staff.
- iii. Did the IEP include measurable goals to address Student's multiple and complex areas of need?
- iv. Did the IEP include appropriate services and supports?
- v. Did the District predetermine Student's educational placement prior to the December 7, 2018 IEP meeting.
- vi. Did the District deny Parent meaningful participation in the development of the Student's December 7, 2018 IEP.
- vii. Did the District appropriately determine the Student's least restrictive placement as the Alternative Educational Program at HPHS?

Once a student is determined eligible for special education and related services, the school district must develop an individualized education program (IEP) for the student. 20 U.S.C. §1414(d). The IEP offered to the student must provide "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's

⁴⁸⁵ FOF D-10b.

⁴⁸⁶ 23 Ill. Administrative Code §226.110 (d).

circumstances." *Andrew F.* 69 IDELR 174 (2017). The IEP must include a statement of the child's present level of academic achievement and functional performance (PLOP), measurable annual goals that will meet the child's needs, a description of how the child's progress toward meeting the annual goal will be measured, and a statement of the special education and related services that are to be provided to the child. 20 U.S.C. § 1414(d)(1)(A)(i)(I), (II), (III). Special education is specially designed instruction to meet a student's unique needs. 34 C.F.R. 300.39(a)(1).

In Illinois, even when the parent has filed the due process complaint and has the burden of proof, the District must present *prima facie* evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate, and available. 105 ILCS 5/14-8.02a(g-55).

A review of the evidence offered at hearing shows that the District has met its burden of establishing a *prima facie* case in that, on December 7, 2018, the IEP team developed an IEP which identified Student's special education needs, including measurable goals, and provided an educational placement which would enable Student to make progress in light of his individual circumstances, while still allowing Student to benefit from having access to general education peers. Specifically, the IEP, drafted with input from District Psychologist, SPED teacher, GRS staff, and Mother, and referencing student's past educational records and evaluations, as well as the recent District reevaluation, determined present levels of performance,⁴⁸⁷ set measurable and reviewable annual goals for Student to address his pressing needs in the areas of executive functioning and

⁴⁸⁷ FOF D-16.

reading comprehension,⁴⁸⁸ and recommended that students placement should be in the HPHS AEP program, a self-contained environment in the high school, which allows students to receive academic instruction as well as support for executive function deficits, behavioral incidents, and additional educational support.⁴⁸⁹ In drafting the IEP, the IEP team considered input from many sources, including District personnel, Mother, private providers, and Student's prior schools,⁴⁹⁰ did not predetermine Student's educational placement, but considered a range of placements, including residential, therapeutic day school, and AEP program.⁴⁹¹ Additionally, the team offered Mother the opportunity to meaningfully participate, and correctly determined, based on available information that Student's least restrictive placement as the AEP program.

In drafting Student's IEP, the District was at a clear disadvantage. Although District Psychologist did interview Student, Student had never been educated at District [REDACTED] and District staff had no first-hand information with which to develop Student's present levels of performance ("PLOP"). The initial draft of Student's PLOP was drafted based solely on a review of available written data, which included Parent provided evaluations and written information from CCBS.⁴⁹² The week of the November 29, 2018 IEP meeting, Mother provided the District with a release to discuss Student with GRS staff, but those discussions had not taken place.⁴⁹³ GRS was properly included. The meeting was continued to obtain additional information on Student's functioning.

⁴⁸⁸ FOF D-13 f.

⁴⁸⁹ FOF D-13

⁴⁹⁰ FOF D-13-16.

⁴⁹¹ FOF D-14

⁴⁹² FOF D-13a. CCBS did not participate in the IEP meetings.

⁴⁹³ FOF D-13d

Prior to the December 7, 2018 meeting, the District provided the draft goals to Mother, and GRS. The District made a genuine attempt to discuss Student's PLOP and draft goals with GRS staff. GRS staff was present at the IEP meeting. Despite the signed release, however, GRS staff would only provide commentary on the goals to Mother; any commentary provided by GRS to Mother was not shared with the District.⁴⁹⁴ Mother offered no feedback on PLOP or draft goals.⁴⁹⁵ Mother did not file a dissent.

In drafting the PLOPS, District [REDACTED] had no option but to rely entirely on information given by outside providers, which included the CREATE addendum,⁴⁹⁶ and Student's Mother. The District did consider the input of all available information when the PLOP was drafted and, therefore, I find that the PLOP statement is appropriate.

Additionally, The District Psychologist and SPED teacher drafted Student's proposed goals based on the limited information available to them at the time. These proposed goals were presented to Mother on November 28 and reviewed on November 29, 2019. Mother expressed concerns about the goals. The IEP team was open to discussing changes to the goals, and, due to a lack of Student information, requested assistance from Mother and GRS. When no input was received, on December 7, 2018, the IEP team moved forward with the goals as written. The goals were partially based on the goals Student was working on at GRS and, as pointed out by the SPED Teacher, once Student was in the program, the goals could be amended based on Student's actual performance. The goals were measurable and did address Student's known areas of need.

⁴⁹⁴ FOF D-16b.

⁴⁹⁵ FOF D-16a.

⁴⁹⁶ FOF D-14.

In sum, A review of the evidence offered at hearing shows that the December 7, 2018 IEP the District was appropriately developed by identifying Student's special education needs and providing a program for Student that would enable him to make progress in light of his individual circumstances.

Parent suggests (in sub-paragraph i. to this issue) that the District failed to provide "timely" notice of the topics to be discussed in advance of the December 7 2018 IEP meeting. A review of the evidence presented at hearing shows otherwise. The fact that November 15, 2018 Eligibility meeting, which Parent attended, was scheduled to develop and IEP. At that meeting, the parties agreed to reconvene on November 29, 2018 for an IEP meeting.⁴⁹⁷ At the November 29, 2018 meeting, which Parent also attended, psychiatric evaluations, goals, accommodations and other IEP matters discussed.⁴⁹⁸ That IEP meeting was reconvened on December 7 2018, where the Student's IEP was completed.⁴⁹⁹ All parties clearly had notice of the topics to be discussed and the December 7, 2018 IEP meeting.

Parent also suggests (in sub-paragraph iv. to this issue) that the IP does not include the appropriate services and supports. First, Parent does not point out any necessary services and supports needed by Student that are not contained the IEP. And affirmatively, the December 7, 2018 IEP's recommendation for placement in the AEP will but provide significant support for Student in the areas of executive functioning deficits, behavioral incidents, an additional educational support, supports which Student needs. This complaint also is without merit.

⁴⁹⁷ FOF D-13.

⁴⁹⁸ FOF D-12

⁴⁹⁹ FOF D-13

Lastly, parent takes issue ((in sub-paragraph vii. to this issue) with whether the District appropriately determined in the IEP that Students least restrictive placement is the AEP.

Schools are required to educate disabled students with their non-disabled peers in the least restrictive environment (“LRE”), in regular classroom settings to the maximum extent appropriate. 34 CFR § 300.114 (a). placement in special classes or separate schools, or other removal of children with disabilities from the regular educational environment, should occur only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. 34 CFR § 300.114 (a)(2).

The HPHS AEP provides academic instruction as well as support and services that student needs an era of executive functioning deficits and behavioral incidents. While AEP students are generally taught by special education teachers, they can take general education classes at HPHS if they show they can meet the academic and social/emotional rigors of the regular classroom. They can also have lunch in the regular lunch room and participate in HPHS sports and clubs.⁵⁰⁰ The IEP team felt that, due to the changes occasioned by Student transitioning from a residential school to HPHS, the additional support provided to student by the AEP program was needed.⁵⁰¹ Evidence shows that, given the special education needs of Student, AEP represents the least restrictive environment for him. It gives him the special education support he needs, while giving of almost full access to the general education setting and the regular student body. Parent’s concern that AEP is too restrictive or not restrictive enough are misplaced. By a preponderance of the

⁵⁰⁰ FOF E 1-3

⁵⁰¹ FOF E-3.

evidence I find that Student's placement in the AEP program at HPHS is Student's appropriate placement as of December 7, 2018.

BASED UPON THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS ORDERED THAT:

1. The District shall reimburse Mother, within 60 calendar days after receiving receipts (in the form of cancelled checks, credit card statements or other cashed negotiable instruments) showing payment to GRS for Student's tuition between September 6, 2018 and December 7, 2018 in the amount of \$37,770.16.
2. The District shall reimburse Mother, by August 1, 2019 the expenses incurred by Mother during Student's GRS placement from September 6, 2018 to December 7, 2018, in the amount of \$3,638.61.⁵⁰²

Within 45 calendar days of receipt of this Order, the Township High School District # [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

⁵⁰² 433.40 (from Chicago); School visit, September 2018, totaled, \$1,268.42. Parent's weekend, totaled \$746.19. Thanksgiving totaled \$773.40. Winter Break/return flight to Chicago \$417.20.

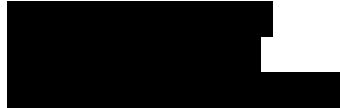
request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

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

Dated: June 4, 2019

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



APPENDIX A

█ v. █ School District # █

Case No: 2019- DP-0194

| Identification | NAME | ACRONYM |
|---|---|------------------|
| CHILD | █ | ER |
| Parent | █ | Mother |
| Attending School | █ | BRS |
| Prior residential school | █ | GRS |
| Prior residential school | █ | CCBS |
| Prior Therapeutic Day School | █ | CTDS |
| District █ Middle School | █ | EMS |
| District █ Elementary School | █ | BES |
| District 113 High School | █ | HPHS |
| Children's hospital | █ | █ |
| Additional Hospital | █ | █ |
| Additional Hospital | █ | █ |
| Additional medical placement | Autism family center partial day program Location unknown. | Family Center |
| Student's private Psychiatrist | █ | Psychiatrist |
| July 2014 Psychological Evaluation Report | █ | July 2014 Report |

| | | |
|---|------------|--------------------------|
| Neuropsychological evaluation | [REDACTED] | Create & Create Addendum |
| District Nurse | [REDACTED] | Nurse |
| District [REDACTED] Sped Records Manager | [REDACTED] | Records Manager |
| Director of student support services District [REDACTED] | [REDACTED] | Director |
| Advisor at GRS | [REDACTED] | Advisor |
| Clinical Psychologist at the Pediatric consultation Center | [REDACTED] | Clinical Psychologist |

APPENDIX B⁵⁰³

LIST OF CROSS-REFERENCED SCHOOL DISTRICT AND PARENT EXHIBITS⁵⁰⁴

| SCHOOL DISTRICT EXHIBIT NO. | PARENT'S EXHIBIT NO. | VARIANCES (if any) |
|------------------------------------|-----------------------------|---|
| 3 | 21 and 90 | The SD's exhibit 3 (eligibility) does not include Parent's P 21-1 – P 21-11 or P 90-1 – 90-11 (the cover e-mail and draft goals). In addition, the cover pages for these exhibits, located at SD 3-7 and P 21-18 (and P 90-18) are discrepant (eligibility section is different). These include Ms. [REDACTED] unsigned "Re-Evaluation of Special Education Entitlement." (See Parent Ex. 156) |
| 3 | 156 (21, 90) | Unsigned copy of Ms. [REDACTED] Evaluation; also included in Eligibility Documentation at SD 3-46 to 59, P 21-57 to 70, P 90-57 to 70. |
| 4 | 64 | The SD's exhibit does not include P 64-1, the cover e-mail. |
| ou5 | 67, 68 | Signed Copies of Ms. [REDACTED] "Re-Evaluation of Special Education Entitlement." Parent's exhibits have cover emails at 67-1 and 68-1. |
| 7-1 – 7-3 | 18 | Notification of Conference for August 16, 2018 meeting and excusal of a team member. |
| 6 and 7 | 20 | SD 6 is the same as P 20-1 to 17; SD 7 is the same as P 20-18 to 20-41. |
| 6 & 7 | 20 | Signed Domain P 20-1 to 17; P 20-18 to 41. |
| 7-1 and 2 | 18-1 and 2, 20-18 and 19 | Notification of Conference for the 8/16/18 meeting |
| 7-7 to 24 | 19, 20-18 to 41, 44 | Draft Domains. |
| 8 | 7 | |
| 9 | 6 | |
| 11 | 4, 12 | The SD's exhibit does not include P 4-25 and 4-26, the summary of scores from the evaluation. This evaluation is also included in an IEP at P 12-28 to 12-51 without the score summaries. |
| 14 | 1 | |
| 16 | 22 | This is listed as the District's copy of the December 7, 2018 IEP. The copy of the December 7, 2018 IEP provided to the Parent after the meeting is at P 22. The two IEPs are discrepant. |

⁵⁰³ This appendix was prepared by the Mother and District Attorneys to assist with understanding the complexities of the evidence presentation in this case.

⁵⁰⁴ If a specific School District exhibit number is excluded from the chart, then there is no corresponding Parent exhibit. The same is true for any Parent exhibit numbers excluded from the chart – there are no corresponding School District exhibits.

| | | |
|------------------------------------|-----------------------------|---|
| | | <p>The cover page for the IEP (SD P 16-1 and P 22-2) are discrepant (disability section is different). In addition, SD 16-6 (Parent’s Specific Learning Disability Eligibility Statement) is not included in the Parent’s exhibit, nor are pages SD 16-32 – 16-34 (Autism Considerations). Parent’s P 22-27 – 22-55 (AEP program schedule and Notice of Procedural Safeguards) are also not included in the SD’s exhibit.</p> <p>By way of additional note SD 16-32-34 (Autism Considerations) are in the Parent’s exhibit 101 at 101-3-5 along with a cover email.</p> |
| SCHOOL DISTRICT EXHIBIT NO. | PARENT’S EXHIBIT NO. | HIGHLIGHTED VARIANCES (if any) |
| 18 | 17 | While these Exhibits track loosely with one another, the SD Ex. 18 indicates it has 66 pages, while the Parent’s Ex. 17 only has 62 pages. In addition, the Conference Summary Report Participants listing on SD 18-2 is blank – the same page at P 17-2 includes signatures. |
| 20 | 16 | |
| 24 | 31 | P 31-3 and 4 and SD 24-1 and 2 are the same – Certificate of Residency. The remainder of Parent’s Ex. 31 are not included in SD Ex. 24. |
| 8 and 9 | 32 | The SD’s Exs. 8 and 9 do not include P 32-1, the cover e-mail to Mr. [REDACTED] sharing these evaluations with the District. |
| 31 | 52 | SD Ex. 31-1 is included in Parent’s 52-1, however there is an additional responsive e-mail included in Parent’s 52-1 as well. |
| 32 | 51 | SD Ex. 32 matches Parent’s P 51-1. The remainder of Parent’s Ex. 51 is not included in SD Ex. 32. |
| 33 | 49 | SD Ex. 33 is included in Parent’s Ex. 49-1, however there is an additional responsive e-mail included in Parent’s Ex. 49 as well. |
| 34 | 46 | SD Ex. 34 matches Parent’s P 46-1. The remainder of Parent’s Ex. 46 is not included in SD Ex. 34. |
| 35 | 45 | |
| 37 | 40 | SD Ex. 37 is included in Parent’s Ex. 40, however there are additional responsive e-mails included in Parent’s Ex. 40 as well. |
| 38 | 120 | |
| 39 | 119 | |
| 48 -1 to 48-28 | 26 | <p>SD 48-3 to 48-8 are the same as P 26-18 to 22 SD 48-9 to11 are the same as P 26-15 to 17 SD 48-12 to14 are the same as P 26-27 to 29</p> <p>The remainder of Parent’s Ex. 26 is not included in SD Ex. 48</p> |
| 49 | 152-2 | [REDACTED] HSD [REDACTED] 2018-19 District Calendar |

CERTIFICATE OF SERVICE BY EMAIL AND CERTIFIED MAIL

I, the undersigned, Mary Jo Strusz, certify that on June 4, 2019, a copy of the FINAL DETERMINATION AND ORDER was served upon the following persons via email transmission of the attached document in pdf format to the email addresses below, and a copies of the printed document with original signatures were placed in the United States Postal Service, Certified Mail, to be delivered to the following parties at the addresses below:

[REDACTED]

[REDACTED]

Andrew Eulass
Due Process Coordinator
Illinois State Board of Education
Dated: February 20, 2019
Division of Special Education Services
100 N. 1st Street
Springfield, IL 62777

June 4, 2019

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

[REDACTED]