

[REDACTED]

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

STUDENT¹,

Student,

2019

Case No: [REDACTED]-DP-0212

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]
School District.

FINAL DETERMINATION AND ORDER

JURISDICTION

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

BACKGROUND

The Student is a 10-year-old, female who is a 5th grade student at a District general education elementary school. She qualifies for special education services under the disability category of other health impairment (OHI) pursuant to an eligibility and IEP meeting held on May 31, 2018. The Student was diagnosed with attention deficit hyperactivity disorder (ADHD) in kindergarten and was supported via a 504 Plan prior to being found eligible for special education services on May 31, 2018. She struggles with focus, attention processing, and executive functioning related to her ADHD diagnosis.

¹ Personal identification information is provided in Appendix A.

Parents filed a due process hearing request on February 27, 2019. (IHO Exhibit #1.)² The District timely filed its response to same on March 11, 2019. (IHO Exhibit #3.) A resolution meeting occurred on March 13, 2019. However, the parties were unable to resolve any of the outstanding issues. (IHO Exhibit #4). Parents subsequently filed an Amended Due Process Complaint Notice on April 16, 2019. (IHO Exhibit #7.) The District timely filed its response to same on April 26, 2019. (IHO Exhibit #9.) In Parents' Amended DPCN, claims were raised that predated the statute of limitations period. Therefore, the District filed a Motion to Dismiss same (IHO Exhibit #10) and Parents filed a response (IHO Exhibit #12.) On July 11, 2019, IHO Schuster held an evidentiary hearing regarding the statute of limitations claims. (IHO Exhibits #13, 15.) The parties elected to participate in state sponsored mediation thereafter on July 19, 2019. However, no agreement was reached with respect to the outstanding issues. (IHO Exhibit #18.)

After an evidentiary hearing, IHO Schuster determined that the "KOSHK" date, the date Parents knew or should have known of the Child Find claim and of their right to bring a due process proceeding regarding same was November 6, 2014. Therefore, the remedy to compensate for a Child Find violation could not extend beyond the two-year statute of limitations period of February 27, 2017. (IHO Exhibit #16.)

On September 11, 2019, a Prehearing Conference was held. At that time, based upon Parents' Amended Due Process Complaint Notice, Child Find and FAPE denial issues were certified for hearing. Parents requested relief in the form of compensatory education and reimbursement for past private services engaged by Parents to compensate for the alleged IDEA violations. (IHO Exhibit #20.)

² The previous IHO, Alan Schuster, was appointed to preside over this matter. This IHO was appointed on October 30, 2019 after IHO Schuster became unavailable.

The Parties jointly requested continuances of the 45-day deadline on July 12, August 6, and December 4, 2019 all of which were granted for good cause shown. (IHO Exhibits #18, 25.) The Prehearing Conference was completed on September 11, 2019 and the Due Process Hearing dates were set by agreement for December 10, 12, and 13, 2019. Those dates were subsequently altered by agreement of the parties to February 13 & 21, 2020 when the previous hearing officer became unavailable and this Hearing Officer was appointed. (IHO Exhibits #21, 25.) The decision due date is set for March 6, 2020. (IHO Exhibit #25.)

The Parents opted for a closed hearing. The Due Process Hearing was held on February 13 & 21, 2020. Parents █████ & █████ represented themselves. Ms. Laura Knittle & Ms. Cassie Black of Kriha Boucek represented the District. The parties presented their individual and joint witnesses.³ The Parents presented the following Exhibits (PE): # 4 (p. 4-5), 10 (p. 34-36), 16 (p. 10), 18 (p. 14), 22 (p. 29), 31 (p. 19), 37 (p. 8), and Mother's curriculum vitae which were admitted into evidence. The District presented the following Exhibits (SD): #1-8, 13-17 which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-33. Both parties submitted oral closing statements, a written outline thereof, and provided any case law relied upon.

ISSUES

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

- (a) Whether the District timely identified and evaluated the Student as a child with a disability pursuant to its Child Find obligation during the period February 27, 2017 through May 31, 2018.

³ Witnesses presented by both parties are identified in Appendix A.

(b) Whether the Student's May 31, 2018 IEP provided the Student with a free and appropriate public education (FAPE) in the least restrictive environment when it allegedly failed to provide the following: (1) appropriate writing and math goals; (2) appropriate special education service minutes in writing and math; (3) extended school year services (ESY) for summer 2018; (4) implementation of the Student's special education services in the general education setting thus enabling the Student to receive educational benefit.

(c) Whether the alleged FAPE violations entitle the Parents to compensatory education services and/or reimbursement for past private services engaged by Parents.

Parents maintain that the District failed to timely identify and evaluate the child as a child with a disability when it did not identify her as such during the period February 27, 2017 through May 31, 2018. Ultimately, eligibility was determined on May 31, 2018.

Parents maintain that the District's May 31, 2018 IEP was inappropriate as it failed to provide for the following: (1) appropriate IEP goals in the areas of writing and math; (2) appropriate special education service minutes in the areas of writing and math; (3) extended school years services (ESY) for summer 2018; (4) implementation of the Student's special education services in the general education setting thus enabling the Student to receive educational benefit.

The District maintains that, at all times in question, it met its obligations pursuant to Child Find and provided the Student with a Free and Appropriate Public Education (FAPE) including an IEP dated May 31, 2018 reasonably calculated to enable the Student to receive an educational benefit.

Parents request the following relief:

- a. Reimbursement for the costs of private services, mental health, and/or educational tutoring in the amount of \$72,495.00.
- b. Compensatory Education in the areas of writing and math of 33,600 minutes or 560 hours at a cost of \$100 per hour for a total of \$56,000.00 to be used over a seven (7) year period. (IHO Exhibit #26.)

The District requests that this Hearing Officer determine that, at all times in question, it met its Child Find obligations to this Student and that the May 31, 2018 IEP provided the Student with a FAPE in the least restrictive environment and accordingly requests that Parents' requested relief be denied.

FINDINGS OF FACT

This Hearing Officer did not have the benefit of a transcript with respect to the testimony heard when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes, recording of the hearing, and recollection. This Hearing Officer carefully

considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether or not specifically referred to or cited when making her final determination. After considering all the evidence, as well as the arguments of both Parents and District counsel, this Hearing Officer's Findings of Fact are as follows:

Child Find

1. The Student is a 10-year old female who is currently enrolled as a 5th grade student in a general education classroom at a District elementary school. She qualifies for special education services under the disability category of other health impairment (OHI) due to a diagnosis of attention deficit hyperactivity disorder (ADHD). (Testimony of Mother⁴, Father, PSY⁵, Ms. Z⁶, Ms. A⁷; SD #4-5.)

2. An initial case study evaluation was conducted by the District during the 2015-2016 school year. In early 2016, the Student was determined to be a child with a disability under the eligibility category of other health impairment (OHI), due to her ADHD diagnosis. However, the IEP team determined that she did not require special education services at that time. A 504 Plan was developed in 2016 to provide accommodations to support the Student's focus, attention, and executive functioning. (Testimony of Mother, PSY; SD #4.)

3. As an Illinois licensed school social worker, Mother was aware of and received the Procedural Safeguards. Parents did not object to the 2016 IEP team determination, did not file a

⁴ Mother is a school social worker with approximately sixteen years of experience. She is licensed as a school social worker by ISBE. (See Mother's curriculum vitae.)

⁵ PSY is the school psychologist. She holds a Bachelor of Arts Degree in Psychology and an Educational Specialist Degree in School Psychology. She is licensed as a school psychologist by ISBE. (Testimony of PSY; SD #17.)

⁶ Ms. Z is a licensed special education teacher, behavior specialist and interventionist in Illinois. She holds a Bachelor's Degree in Special and General Education and a Master's Degree in Special Education. She holds an LBS1 certification in Illinois. (Testimony of Ms. Z; SD #17.)

⁷ Ms. A is learning resource teacher. She holds a Master's Degree in early childhood education and LBS1 and ELL endorsements. She is licensed by ISBE. (Testimony of Ms. A; SD #17.)

request for a due process hearing, did not file a state complaint, and agreed to the proposed 504 Plan. (Testimony of Mother.)

4. The Student's 504 Plan consisted of providing accommodations and tools to assist the Student with focus, attention, and distractibility issues related to her ADHD. (Testimony of GE1, OT1, Ms. Z; SD# 8.)

5. During her second grade school year, 2016-2017, the Student received response to intervention (RtI) Tier III math support from an interventionist/special education teacher. At the beginning of the 2016-2017 school year, the RtI math interventions consisted of five (5) days per week, twenty (20) minutes per day of work with Ms. Z. The Tier III math interventions consisted of front loading the next day's lesson, reteaching math concepts, and assisting the Student to break down word problems. The Tier III math interventions were general education curriculum delivered by the interventionist. The interventions were designed to support the Student's difficulties with organization and executive functioning related to her ADHD diagnosis. (Testimony of GE1⁸, Ms. Z; SD #15.)

6. During her second grade year the Student progressed through the second grade general education curriculum in all curriculum areas. She met her RtI math goal of maintaining a 70% or above on unit assessments in math. She was progress monitored by GE1 and Ms. Z via her classroom work, unit assessments in math and AIMS Web assessments. In February of 2017, the Student's math RtI interventions were reduced to three (3) days per week, for twenty (20) minutes per day due to her progress. (Testimony of GE1, Ms. Z; SD #15; PE #16.)

7. The Student received passing grades in all curriculum areas in second grade and advanced to third grade with reduced, Tier II, RtI supports and a 504 Plan. Her performance was

⁸ GE1 holds of Bachelor of Science Degree in Early Childhood Education. She is licensed to teach in Illinois by ISBE.

commensurate with that of her second grade peers. She was an average student in writing and math. She was meeting or approaching standards across all curriculum areas. (Testimony of GE1, Ms. Z, OT1; SD #13.)

8. During the 2016-2017 school year, the Student did not require a case study evaluation for special education services as she was able to progress in the general education curriculum, received passing grades, and was successful with reduced RtI supports in math. (Testimony of GE1 and Ms. Z; SD #13).

9. Both GE1 and Ms. Z were familiar with case study evaluations for special education services and knew how to refer a student for same if they had concerns. (Testimony of GE1, Ms. Z.)

10. There were no concerns regarding regression and recoupment for this Student after completion of second grade. (Testimony of Ms. Z.)

11. The Student received occupational therapy services during second grade pursuant to her 504 Plan. She received both direct and consultative services. The occupational therapy services were provided to support handwriting legibility, sitting still, and paying attention related to the Student's ADHD diagnosis. (Testimony of OT1, GE1; SD #8.)

12. The Student made appropriate progress during second grade compared to her general education peers. The Student made significant improvements in handwriting legibility, title case, copy speed, and fine motor manipulation. At the end of second grade, consult only occupational therapy services were recommended for the next school year based upon the Student's progress. (Testimony of OT1⁹.)

⁹ OT1 is an occupational therapist licensed by ISBE. She holds a Bachelor of Science Degree in occupational therapy and has over fifteen (15) years of experience with the District. (Testimony of OT1; SD#17.)

13. The Student was able to and did successfully access the supports provided in her 504 Plan including preferential seating, gum, use of word prediction software, fidgets. (Testimony of GE1, Ms. Z, OT1.)
14. The testimony of GE1, Ms. Z, and OT1 was uncontroverted by Parents at hearing. (Testimony of Mother, Father.)
15. The Student continued to be supported by a 504 Plan during her third grade school year, 2017-2018. (Testimony of GE2¹⁰, OT2¹¹, Ms. A; SD #8.)
16. During the 2017-2018 school year, the Student received RtI Tier II supports in math and support in writing. These supports were general education curriculum supports delivered by the general education teacher, an interventionist/special education teacher, and the occupational therapist. The Student did not have academic deficits. The RtI interventions were designed to assist the Student in learning to use tools to support her with executive functioning, attention and focus, and organization of her thoughts. The RtI team met every six (6) weeks to monitor the Student's progress. (Testimony of GE2, Ms. A, OT2: SD #4.)
17. The Student performed at grade level in all curriculum areas during her third grade school year. She was in the middle of the average range in writing with a majority of her third grade peers. (Testimony of GE2, Ms. A, OT2; SD #13.)
18. In math the Student made expected, grade level progress. She did well with computation, adding, subtracting, single-step word problems, memorization of her multiplication facts. She had some difficulty with multi-step word problems due to rushing through her work and lack of

¹⁰ GE2 is general education third grade teacher. She has been employed by the District for nineteen (19) years. She holds a Bachelor of Science Degree in Education and a Master's Degree in Curriculum and Instruction. She is licensed by ISBE to teach grades K through 9. (Testimony of GE2; SD#17.)

¹¹ OT2 holds a Master's Degree in occupational therapy and has been a practicing occupational therapist for over eleven (11) years. She is a licensed school occupational therapist by ISBE. (Testimony of OT2; SD#17.)

focus due to her ADHD. Interventions provided tools to help the Student breakdown math problems in order to successfully complete them. (Testimony of GE2, Ms. A.)

19. The Student received passing grades in third grade and advanced to fourth grade. (Testimony of GE2, Ms. A, OT2; SD #13.)

20. At the end of third grade, GE2 and Ms. A did not believe that a case study evaluation was warranted due to the Student's ability to perform at grade level in all areas of the general education curriculum. The Student's 504 Plan was providing the supports required for the Student to succeed in the general education setting. (Testimony of GE2, Ms. A.)

21. The Student's performance on standardized testing, including the MAP test, was inconsistent. This was due to the Student's ADHD, not skill deficits, and was successfully addressed through the Student's accommodations. (Testimony of GE1, GE2, Ms. Z., Ms. A; PE#4 p. 4-5.)

22. During third grade, the Student continued to successfully access her tools and accommodations. (Testimony of GE2, OT2, Ms. A.)

23. The testimony of GE1, GE2, OT1, OT2, Ms. Z and Ms. A was uncontroverted by Parents at hearing. (Testimony of Mother and Father.)

24. Parents requested a case study evaluation for special education services in spring 2018. The consent to evaluate was signed by Mother on March 21, 2018. (Testimony of Mother, PSY; SD #6.)

25. An Eligibility and IEP meeting was held for the Student on May 31, 2018 at which time the Student was found eligible for special education services pursuant to the disability category

of other health impairment (OHI) based upon her ADHD diagnosis. (Testimony of PSY, ADSE¹²; SD#5.)

Free and Appropriate Public Education (FAPE)

26. Pursuant to the May 31, 2018 Eligibility and IEP meeting, the Student's identified needs were related to attention, organization, and executive functioning related to her ADHD diagnosis. (Testimony of PSY, GE3¹³, SPED¹⁴; SD #5.)

27. A functional IEP goal was developed to assist the Student in using the tools available to her to address any difficulties she may have in academic areas due to her inability to sustain attention and her tendency to rush through her work on assignments and tests. (Testimony of PSY, GE3, SPED, ADSE; SD# 4.)

28. At the May 31, 2018 IEP meeting, math and writing goals were not added to the IEP as there was no evidence to support a need for those goals and the Student was meeting grade level expectations in writing and math. (Testimony of ADSE, SPED, OT2, GE3; SD# 4.)

29. The May 31, 2018 IEP provided for ninety (90) minutes per week of Learning Resource support in the general education classroom to assist the Student with executive functioning, attention and focus related to math and writing. (Testimony of GE3, SPED; SD# 4.)

30. At the time of the May 31, 2018 IEP meeting, the IEP team reviewed the need for extended school year (ESY) services. At that time, the available data did not support a need for ESY services. (Testimony of ADSE; SD#4.)

¹² ADSE is the Assistance Director of Special Education for the District. ADSE holds Master's Degrees in Social Work and Educational Leadership. She has worked as the Assistance Director of Special Education for seven (7) years. (Testimony of ADSE; SD# 17.)

¹³ GE3 was the Student's 4th grade teacher. She retired in June 2019. She holds Bachelor's and Master's Degrees in Education. She was employed as a teacher by the District for nineteen (19) years. She was licensed as a general education teacher with ISBE prior to her retirement in June 2019. (Testimony of GE3; SD# 17)

¹⁴ SPED is a Learning Specialist and licensed Special Education teacher. She has been a special education teacher for sixteen (16) years. (Testimony of SPED; SD# 17.)

31. During her 4th grade year, the Student's progress in math was monitored by GE3 and SPED. SPED observed the Student on a daily basis in math for the 1st trimester. She also monitored the Student's tests, quizzes and classwork throughout the 2018-2019 school year. The Student understood the 4th grade math curriculum and could complete math assignments. While she had some difficulty with word problems, this was an area of difficulty for many 4th grade students because it required concentration, breaking the problem apart, focusing on what the question was asking, and ignoring distractions in order to solve the problem. The Student made progress in math during the school year. She was able to perform in the average range in the classroom, could complete class work, and was in the average range on 4th grade curriculum general education math assignments. She received passing grades in math for her 4th grade year. (Testimony of GE3, SPED; SD# 13, 14.)

32. The Student sometimes had difficulty displaying her knowledge in math on tests because she would rush through tests, especially if they were lengthy, would not take breaks (even when encouraged to do so), and would not recheck her work (even when encouraged to do so). Her IEP provided accommodations to support her with this. During the school year, the Student improved her use of tools and accommodations. However, she did not always access them consistently and her test results, especially those on standardized tests, were sometimes impacted. (Testimony of GE3, SPED.)

33. The Student's IEP was amended in November 2018 and December 2018 to add two written language goals in response to Parent concerns and the increasing demands of the 4th grade writing curriculum. (Testimony of GE3, SPED; SD# 2-3). Further occupational therapy integrated monthly minutes were revised to monthly consult minutes and the number of monthly minutes was reduced. (Testimony of OT2; SD# 2-3.)

34. The Student met her May 31, 2018 IEP goal. She also met both of the writing goals added pursuant to mid-year IEP amendments. The Student made progress in accessing her tools over the year in order to progress in all areas of the curriculum. In writing, she increased her use of her Chromebook including her co-writer program to assist with spelling. GE3 met with the Student for 1:1 sessions to address editing issues with her writing. When the Student met with GE3, she was able to find and correct her own editing mistakes. The Student made progress in writing, and in all areas of the 4th grade curriculum, per her IEP goal progress updates and report cards. (Testimony of GE3, OT2, GE4¹⁵, SPED; SD# 1, 13.)

35. The Student received passing grades in 4th grade and advanced to 5th grade. (Testimony of GE3, GE4, SPED; SD# 1, 13-14.)

36. The testimony of GE3, GE4, SPED and ADSE was uncontroverted by Parents at hearing. (Testimony of Mother, Father.)

37. Parents did not present any testimony or documentary evidence at hearing to support their reimbursement and compensatory education requests. (Testimony of Mother, Father.)

CONCLUSIONS OF LAW

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

Child Find Obligation

The Individuals with Disabilities Education Act ("IDEA") guarantees children with disabilities the right to a free, appropriate, public education ("FAPE"). 20 U.S.C. §1412(a)(1).

IDEA defines a child with a disability as a child having a specific physical, mental, or emotional

¹⁵ GE4 was the Student's STEM (Science Technology Engineering and Math) teacher for 3rd through 5th grades. She is a certified general education teacher licensed by ISBE to teach grades K through 9. She holds a Bachelor of Science Degree and a Master's Degree in Education.

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

In Illinois, each school district shall be responsible for seeking out and identifying all children from birth through age twenty-one who may be eligible for special education and related services. 34 C.F.R. §300.111(a)(1)(i). Procedures have been developed so that school districts can fulfill the child find responsibilities. 23 Ill. Admin Code §226.100.

Parents maintain in their Due Process Complaint Notice and Amended Due Process Complaint Notice that the District failed to timely identify the Student as a “child with a disability” alleging that the District should have found her eligible at some time between February 27, 2017 and May 31, 2018, the date on which she was found eligible. This Hearing Officer finds Parents’ contention to be without merit.

Child Find “does not demand that schools conduct a formal evaluation of every struggling student.” *Demarcus L. v. Bd. Of Educ. Of the City of Chi.*, 2014 WL 948883, *5 (N.D. Ill. 2014) quoting *D.K. v. Abbington Sch. Dist.* 696 F.3d 233, 249 (3rd. Cir. 2012.) The standard to be applied is whether the school district overlooked “clear signs of disability” and

was “negligent in failing to order testing,” or “that there was no rational justification for not deciding to evaluate.” *Id.* at *5. The testimony and documentary evidence presented at hearing reveal the following. In early 2016, the District identified the Student as a student with a disability in the category of OHI. However, the IEP team determined that the Student was not in need of special education services. (FF# 2.) Parents did not object to this determination and did not pursue a due process complaint or state complaint at that time. In early 2016, a 504 Plan was established and Parents agreed with the contents of same. (FF# 3.) The Student was meeting academic standards in all curriculum areas during her second and third grade school years as evidenced by her report cards and the testimony of the general education teachers, interventionists and occupational therapists who worked with her during those school years. (FF# 5-7, 11-13, 15-19.) The Student was continuously progress monitored during her second and third grade years by the general education teachers and interventionists that worked with her every day. The Student was an average Student and her performance in writing and math in second and third grade was commensurate with that of her same age peers. The Student required some pre-teaching and re-teaching of information but this was done using general education curriculum and was done by either the classroom teacher or an interventionist who was assigned to support general education students needing additional support and practice in specific skill areas. (FF# 5-7, 11-13, 15-19.) The Student’s performance on standardized assessments was inconsistent but the teachers and interventionists working directly with the Student on a daily basis believed this was due to her ADHD diagnosis rather than skill deficits and was successfully addressed through use of accommodations. (FF# 21.) The Student had difficulty sustaining attention and focus and had a tendency to rush through her work. However, the accommodations the Student received via her 504 Plans were addressing those difficulties. (FF# 21-22.) Further

the testimony of the Student's general education teachers, interventionists and occupational therapists was uncontroverted at hearing. (FF# 23.) The Student's second and third grade teachers and interventionists (who were also special education teachers) did not believe that a case study evaluation for special education services was warranted for this Student as she was progressing through the general education curriculum and they were able to decrease interventionist and occupational therapist supports. (FF# 8-12, 20.)

Further, this Hearing Officer finds the testimony of GE1, GE2, Ms. Z, Ms.A, OT1 and OT2 to be credible and persuasive. All six of these individuals are licensed, experienced educators who worked directly with this Student on a daily basis for at least a full school year. Based upon their respective demeanors at hearing, experience, knowledge of the Student and experience working with her, and the consistent testimony provided, this Hearing Officers finds each of these witnesses to be credible and persuasive. Further, the respective testimony of these six witnesses was uncontroverted by Parents at hearing. While Mother's and Father's testimony consisted of high-level assertions that the Student did not understand classroom material and was not able to independently complete homework during the later part of third grade, their assertions were not supported by any evidence introduced at hearing.

Based upon repeated requests by Mother to evaluate the Student, she was again found to be a Student with a disability in the category of Other Health Impairment (OHI) based upon her ADHD diagnosis on May 31, 2018. However, the need for provision of special education services was not clear cut as the Student was able to progress through the grade level general education curriculum. However, based upon her attention, focus, organization, and executive functioning deficits, an IEP was created with a functional goal to address those identified deficit areas. (FF# 25-27.)

Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that, at all times in question, the District met its Child Find obligations to this Student.

Free Appropriate Public Education (FAPE)

The first prong of *Burlington-Carter* requires that the hearing officer must determine whether a free and appropriate public education was made available to the child in a timely manner. 34 C.F.R. §300.148(c); *Burlington* at 359; *Carter* at 7. The Individuals with Disabilities Education Act (“IDEA”) guarantees children with disabilities the right to a free, appropriate, public education (“FAPE”). 20 U.S.C. §1412(a)(1). In order to determine whether a school district has provided a FAPE requires the determination of whether the school district complied with the procedural and substantive requirements of IDEA. *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982). As recently clarified by the United States Supreme Court, under the Individuals with Disabilities Education Improvement Act (“IDEA”), a school satisfies its substantive obligation to provide a free appropriate public education by offering a child “an IEP reasonably calculated to enable a child to make progress in light of the child’s circumstances.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.)

In matters alleging a procedural violation, the hearing officer may find that a student did not receive a FAPE only if the procedural inadequacy impeded the student’s right to a FAPE, significantly impeded the parent’s opportunity to participate in the decisions-making process regarding the provision of a FAPE to the parent’s child or caused a deprivation of educational

benefit. 20 U.S.C. §1415(f)(3)(E); 34 C.F.R. §300.513(a); *Rowley* at 206-207. In the instant case, no procedural violations of the IDEA have been alleged and, accordingly, are not at issue.

The IDEA provides a specific framework for Individualized Education Programs (IEPs), composition of the IEP team, and development of the IEP among other things. See 34 C.F.R. §§300.320-300.325. Under IDEA, an IEP must include “(1) a statement of the child’s present levels of academic and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum” and “(2)(i) [a] statement of measurable annual goals, including academic and functional goals designed to (A) Meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum.” 34 C.F.R. 300.320(a). “[A]n IEP is reasonably calculated to confer educational benefit when it is ‘likely to produce progress, not regression or trivial educational advancement.’” *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7th Cir. 2004.) [T]he progress contemplated by the IEP must be appropriate in light of the child’s circumstances. . . . The instruction offered must be ‘*specially designed*’ to meet a child’s ‘*unique needs*’ through an *individualized* education program.” *Andrew F.*, 137 S.Ct. 988. The IEP is to provide a statement of the “special education and related services and supplementary aids and services . . . to be provided to the child.” 34 C.F.R. 300.320(a)(4).

For students who are “fully integrated into the regular classroom,” FAPE typically means that the school “is providing a level of instruction reasonably calculated to permit advancement through the general education curriculum.” *Andrew F.*, 137 S.Ct. at 1000. When students are educated primarily in the general education environment, “the system itself monitors the educational progress of the child” as “regular examinations are administered, grades are

awarded, and yearly advancement to higher grade levels is permitted for those children who attain an adequate knowledge of the course material.” *Id.* at 999, quoting *Bd. Of Educ. of Hendrick Hudson, Cent. Sch. V. Rowley*, 102 S.Ct. 3034, 3049 (1982).

Based upon the testimony and documentary evidence presented at hearing, Parents’ contention that the Student was denied FAPE, when her May 31, 2018 IEP failed to provide (1) appropriate writing and math goals; (2) appropriate special education service minutes in writing and math; (3) extended school year services (ESY) for summer 2018; (4) implementation of the Student’s special education services in the general education setting thus enabling the Student to receive educational benefit, is without merit.

The testimony and documentary evidence presented at hearing illustrate the following: Pursuant to the Eligibility and IEP meeting held on May 31, 2018, the Student’s identified areas of need were attention, organization, and executive functioning related to her ADHD diagnosis. (FF# 26.) A functional goal was developed to assist the Student with using tools available to her to address her difficulties in any academic area due to her inability to sustain attention and her tendency to rush through work completion. (FF# 27.) At the time the IEP was developed, the IEP team determined that math and writing goals were not necessary, as the Student’s third grade teachers reported that she was able to comprehend and perform grade level class work and performed within the average range when compared to her same grade peers in both areas. (FF# 17-20.) Further, the IEP provided for occupational therapy and learning resource service minutes integrated into the general education setting to support the Student with accessing her tools and addressing her attention, focus and executive functioning deficits. (FF# 29, 31.)

The respective testimonies of GE3, GE4, and SPED were consistent with one another and were supported by the documentary evidence presented at hearing. Further, the testimony of

each of these witnesses corroborated that of the other witnesses. For those reasons, along with the demeanor of these witnesses at hearing, this Hearing Officer finds the respective testimony of GE3, GE4, and SPED to be credible and persuasive. The Student made progress in all areas of the general education curriculum, including math and writing, during her 4th grade, 2018-2019 school year. She received passing grades and met all of her IEP goals, including two writing goals added during the school year to address Parent concerns and to support the Student as writing expectations increased for all 4th grade students. (FF# 31-34.) Further, the Student advanced from 4th to 5th grade. (FF# 35.) The testimony and documentary evidence presented at hearing illustrates that the District “is providing a level of instruction reasonably calculated to permit advancement through the general education curriculum” as required by *Endrew F* and is thus providing the Student with a free and appropriate public education. *See 137 S.Ct.* at 1000.

During the May 31, 2018 IEP meeting, the IEP team considered the need for ESY services. At that time, it was determined that there was no available data which supported a need for those services. (FF# 30.) This testimony and documentary evidence was uncontroverted by Parents. (FF# 36.)

At hearing Parents attempted to advance a theory that the Student should have been identified as a student with a learning disability or a specific learning disability. However, they presented no evidence at hearing to support this claim. The teacher reports from nine (9) different sources and the school psychologist indicated that there was no basis to believe the student has a learning disability as she was able to comprehend and manipulate grade level curriculum and demonstrate knowledge and retention of same on class work, classroom assessments and in 1:1 sessions with her general education teachers and interventionist/special education teachers. (FF# 6-7, 11-13, 16-19, 28-29, 31, 34-35.) Parents point to and emphasize

the Student's performance on standardized assessments such as the MAP and PARCC test to support their claim that the Student is unable to perform at grade level. However, the testimony at hearing from the teachers working with the Student directly, everyday indicate that the Student generally did not perform well on standardized tests due to her attention and focus issues and standardized test scores were just one data point considered. Several of the Student's teachers reported that they did not consider her standardized test scores to be accurate reflections of her performance as the Student tended to rush through especially lengthy assessments and an observer, assigned to support the Student during standardized testing, had observed her randomly "clicking" answers on the computerized MAP assessment. (FF# 21, 32.) The testimony and documentary evidence presented at hearing was consistent and overwhelming. The Student was able to perform at grade level, meet her IEP goals and advance through the general education curriculum. (FF# 31-34.)

Therefore, it is the finding of this Hearing Officer that, at all times in question, the District provided the Student with a free and appropriate public education (FAPE) in the least restrictive setting i.e. the general education classroom. Parents' claims to the contrary are without merit.

CONCLUSION

Based upon the Findings of Fact and Conclusions of Law, the District timely identified the Student as a Student with a disability and thus met its Child Find obligation. Further, the District, at all times in question, provided the Student with a free and appropriate public education (FAPE) in the least restrictive environment. Therefore, Parents are not entitled to reimbursement for outside services obtained by them nor are they entitled to any compensatory education award.

Parents' requested relief is hereby denied.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:
Parents' requested relief is hereby denied and Parents' complaint is dismissed with prejudice.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

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

NOTICE OF RIGHT TO APPEAL

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

Dated: March 3, 2020

/s/: Janet K. Maxwell-Wickett

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]

APPENDIX A

[REDACTED] v. [REDACTED]
Case No: 2019-DP-0212

Child	[REDACTED]
Attending School	[REDACTED] Elementary School – District [REDACTED]
Child’s Parent(s)/Petitioners	[REDACTED] (Mother) & [REDACTED] (Father)
Joint Witnesses:	
[REDACTED]	Occupational Therapist (OT1)
[REDACTED]	Occupational Therapist (OT2)
[REDACTED]	General Education Teacher (GE1)
[REDACTED]	General Education Teacher (GE2)
[REDACTED]	General Education Teacher (GE3)
[REDACTED]	Assistance Principal Husmann Elementary (AP)
[REDACTED]	Interventionist (Ms. Z)
[REDACTED]	Interventionist (Ms. A)
[REDACTED]	STEM General Education Teacher (GE4)
[REDACTED]	School Psychologist (PSY)
[REDACTED]	Special Education Teacher (SPED)
[REDACTED]	Assistant Director of Special Education (ADSE)
[REDACTED]	Director of Special Education (DSE)
Parent Witnesses:	
[REDACTED]	Mother
[REDACTED]	Father