

[REDACTED]

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

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[REDACTED]  
Student,

Case No: 2020 DP 0028

v.

Kathleen C. Fuhrmann, Impartial Hearing Officer

[REDACTED] School District [REDACTED]

School District.

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**FINAL DETERMINATION AND ORDER**

**JURISDICTION**

The undersigned has subject matter 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.* The personal jurisdiction in this matter of the undersigned is limited to the parties to this matter, specifically Student, Mother, Father, and the [REDACTED] School District [REDACTED]

The standard of proof in impartial hearings under the IDEA is a preponderance of the evidence. 20 U.S.C. § 1415(i)(2)(C)(iii). Under this standard, the party seeking relief must establish that the fact sought to be proved is more probable than not.

The District has a statutory duty to produce evidence that it has properly identified the student’s disability needs in terms of their nature and severity, whether the student has been determined as eligible for special education and related service and that it is providing or has offered a free appropriate public education (FAPE) to the student in the least restrictive environment (LRE). (See 105 ILCS 5/14-8.02a(g-55).) This obligation to present evidence does not place the burden of proof on the district. *Kerry M. v Manhattan Sch. Dist. #11*, 106 LPR 58547 (N.D. Ill. 2006).

## **BACKGROUND**

Petitioners is the parent of [REDACTED] (“Student”), an eleven-year-old sixth grade student with a disability, eligible for special education and related services under eligibility classifications of Emotional Disability and Specific Learning Disability. District offered Student special education and related services in both the general education and special education setting, with accommodations and modifications for classroom and assessment including assistive technology support at [REDACTED] Middle School, her home school, for the 2019-2020 school year. Parents unilaterally placed Student at [REDACTED] in Lemont, Illinois for Summer 2019 and the 2019 -2020 school year as a 6<sup>th</sup> grade student because they believe that the District has failed to provide Student with a free appropriate public education (“FAPE”) for the past several years. Parent feel that the District failed to provide Student with appropriate goals, special education instruction, services and supports to meet her needs resulting in Student not making progress commensurate with her ability.

Petitioners filed their Due Process Complaint on August 16, 2019 against [REDACTED] CUSD 201U (“District”) pursuant to the Individuals with Disabilities Education Act (“IDEA”). IHO Schuster was appointed to hear this matter on August 21, 2019. On September 4, 2019, Petitioners served their Amended Due Process Complaint (“Complaint”) against District pursuant to the IDEA. The undersigned Hearing Officer was appointed to preside over this case on October 30, 2019 after the recusal of IHO Schuster.

On September 26, 2019, a prehearing conference was held in the above matter. The conference was conducted by telephone from 2:00 p.m. to 2:45 p.m. Participating in the conference were: Alan Schuster, Hearing Officer; Brad Dembs, Esq. of Matt Cohen & Associates for Petitioners; and, Courtney Stillman, Esq. of Hauser, Izzo, Petrarca, Gleason, & Stillman for Respondent District. After the substitution of IHO Schuster, the undersigned hearing officer convened a status conference on November 4, 2019 to reschedule a hearing, to her conflict arising from a hearing scheduled in another matter on the hearing dates selected with IHO Schuster. The parties rescheduled the hearing. On December 6, 2019 a status conference was convened to continue with hearing scheduling efforts and to conduct a review of the prehearing order with this newly assigned hearing officer. On December 12, 2019 the hearing officer notified the parties by order that the alternate hearing dates in February became available to this matter and rescheduled the hearing on February 2 to 7, 2020. On January 9, 2020 a status conference was convened to schedule a status conference to deal with any post Five-Day disclosure objections or other matters that would impact the hearing. The parties filed a joint motion to extend/continue the 45 day deadline to March 9, 2020 to provide sufficient time for the completion of all scheduled hearing activities, including the issuance of a decision. The motion was granted and the 45-day decision deadline is March 9, 2020. On January 29, 2020 a final status conference was convened by telephone. The parties raised specific objections to Five-Day disclosures. The hearing officer ruled on the objections and issued a written order on February 2, 2020.

## HEARING

The closed hearing was convened on February 3 to 7, 2020 at the [REDACTED] School District [REDACTED] Office in Crete, Illinois. Present for the hearing were Father and Mother with her attorneys Matt Cohen, Esq., and Brad Dembs, Esq. of Matt Cohen & Associates, and District was represented by Courtney Stillman, Esq. of Hauser, Izzo, Petrarca, Gleason & Stillman. The parties gave opening statement and testimony of the following witness was taken: [REDACTED] Principal HPDS<sup>1</sup>, [REDACTED] [REDACTED] School Social Worker, [REDACTED] [REDACTED] M.S., CCC/SPL private Sp/L evaluator, [REDACTED] [REDACTED] Speech/Language Pathologist, Dr. Michael J. Balthazor<sup>5</sup>, Ph.D. clinical

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<sup>1</sup> JS has been the principal at HPDS since 2011. JS received a Bachelor of Arts degree in theater and elementary education from Beloit College in 1974 and a Master of Arts degree in educational administration from Peabody Vanderbilt University in 1979. JS currently holds Illinois type 03 elementary education teacher license (k-9) and Educational Administrative licenses (K-12), but he does not hold any special education licensure (R53-24.) JS has 13 years of experience with Maine School District no. 63 as an elementary general education teacher in grades 4-6 with the most experience in 5<sup>th</sup> and 6<sup>th</sup> grade. He served as an assistant principal for three (3) years and a high school principal for three (3) years. He has taught many student with learning disabilities in his general education classes and collaborated with special education teachers. He also has experience in Skokie School District 68 as an Elementary principal for one year and junior high principal for five (5) years. JS has been a principal at the HPDS Chicago campus for the past seven (7) years and opened the Lemont campus last year. (Testimony of JS.)

<sup>2</sup> MC has been the CKS school social worker since 2016. She holds a type 73 license in school social work. She has been employed by the District as a school social worker since 2013 and has experience as a classroom counselor at a therapeutic day school for two years prior to joining the District. MC holds a BS in psychology and a BSW in social work and a MSW all from Loyola University, Chicago. (Testimony of MC and R2-1.)

<sup>3</sup> ML is a private speech and language pathologist, licensed in Speech and Language Pathology by the State of Illinois and New York State. ML has Bachelor of Arts in Speech and Hearing and a Master of Science degrees in Speech/Language Pathology and Audiology (1978) from Brooklyn College of the City University of New York. ML belongs to several professional organizations and in the past held an Illinois type 10 teaching Certificate. She has professional experience in the clinical and educational setting. She has been in private practice with Comprehensive Speech and Language Pathology, LLC since 1982 where she completes diagnostic evaluations and provides therapeutic services to children. (Testimony of ML and P52.)

<sup>4</sup> JB is a speech and language pathologist for the District. She holds an Illinois teaching certification with endorsements in Speech & language Impaired Pre-K to age 21 and Speech-Language Pathologist license Pre-K to 21. JB holds a Bachelor of Health Sciences with a Major in Communication Disorders and Master of Health Science from Governors State University in 1995. She has been employed by the District as a Speech-Language Pathologist since 2004. She also worked as an independent speech-language pathologist from 1999 to 204 and in Post Care Rehab from 1995 to 1998 as a Speech-Language Pathologist. Her responsibilities with the District include the diagnosis and treatment of speech and language disorders in educational setting.

<sup>5</sup> Dr. B is a clinical psychologist, licensed in the State of Illinois, he holds a Ph.D. in Child Clinical Psychology from Florida State University in 1995, a Master of Science in Child Clinical Psychology from Florida State University in 1987, a Master of Education in School Psychology from University of Arizona in 1984 and a Bachelor of Arts in psychology from University of Arizona in 1982. His professional experience includes work in clinical and educational settings since 1982. He has published and presented for professional organizations and has been involved in research. Since 2014, Dr. B has worked as a clinical psychologist at Neurobehavioral Associates where he conducts neuropsychological evaluations of children and adolescents. Dr. B has been employed by several school districts to conduct evaluations and has participated in IEP meetings and visited special education programs

psychologist, [REDACTED] [REDACTED] special education teacher, Kathryn Bolster<sup>7</sup>, middle school special education teacher, [REDACTED] [REDACTED] 5<sup>th</sup> grade general education teacher, Kimberly Mraz<sup>9</sup>, District Occupational Therapist, Mother, and Ellen Ramsden-Belotti<sup>10</sup>, Director of Special Education for District.

The hearing was transcribed by Linda K. Madison of Madison Reporting Service, Inc. on February 3, 2020, by Carrie Vellenga, CSR, RPR of Cynthia A. Pavisich & Associates, Inc. on February 4 and 6, 2020 and Cynthia A. Pavesich Good, CSR of Cynthia A. Pavesich & Associates, Inc. of Chicago.

At the close of the hearing the parties reviewed all documents offered into evidence and moved for the admission into evidence the following:

Joint Exhibits marked JE 1 to 11, 13, 15, 16, 18 to 20, 22, 26, 27, 31 to 33, 40 to 44, 46, 48, 52, 55, 56, 58, 62,

Parent Exhibits marked P 3, 12, 28, 29, 47, 49, 51 to 57,

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in public and private settings. He has observed the HPDS program at the north campus. (Testimony of Dr. B and P51.)

<sup>6</sup> JD is a District special education teacher at CSK. She has been at CSK since 1996. She holds a LBS1 pre-K to 9, and LBS1 age 6-21, Secondary Education and Reading Specialist endorsements. She holds a BS in Education with a major in Special Education from Eastern Illinois University in 1996 and a Master of Science in Education: Reading Education from Olivet Nazarene University in 2019. JD taught Student since 2<sup>nd</sup> to 5<sup>th</sup> grade. (Testimony of JD and R3.)

<sup>7</sup> KB is a middle school special education teacher for the District. She has worked at CMMS since 2012. She holds an LBS1 license and a bachelor's degree in education from Illinois State University since 2012. (testimony of KB and R8.)

<sup>8</sup> JF is a 5<sup>th</sup> grade general education teacher at CSK. She has a bachelor's degree in Elementary Education from Governors State University in 1997, a master's degree in Multicategory Special Education in 2004, and a master's degree in Educational Administration from American College of Education in 2009. JF holds an Illinois teaching license with endorsements in LBS 1: learning disabilities, mental retardation, elementary education, social science, general administration and language arts. She has been employed as a teacher by the District since 2005 and has continuous teaching experience since 1997. (Testimony of JF and R7.)

<sup>9</sup> KM is an Occupational Therapist who works for Omni Therapeutics, LLC as a school based occupational therapist for the District. She has a current Illinois license with occupational therapy endorsement. She earned a Bachelor of Science in Occupational Therapy from University of Illinois, Chicago Campus in 1985. She has been employed as a school based occupational therapist since 2005. As a school based occupational therapist KM evaluates students, provides treatment services to students and supervises the COTA provision of occupational therapy services.

<sup>10</sup> EB, the Director of Special Education holds a Illinois Educator License with endorsement in Director of Special Education, General Admission, Superintendent, School Social Worker. She holds a BA in Family Studies from St. Xavier University, a Masters in Social Work from University of Illinois, Jane Addams College of Social Work, and a MA in Educational Administration from Governors State University. EB has been employed by the District since 2015 and she has school social worker experience since 1996 and clinical social work experience from 1981 to 1996.

School District Exhibits marked R 1 to 3, 5 to 8, 11, 13 to 15, 18, 21, 23, 24, 30, 31, 33, 35, 38 to 42, 45 to 47, and 49 to 54, and IHO Exhibit A and B (the written documents presented at closing with points of authority).

The District objected to the admission of P 30 and the HPDS progress updates that were not included in the Five-Day Disclosures. Parents argued that the updated documents were not available at the time of the Five-Day disclosures and that they were provided to the District as soon as they were available to the parent. The District's objection was sustained, and the documents were not allowed into evidence.

In addition, during the hearing, Parent requested an in-camera review of redacted notes that the District social worker testified were personal notes which had not been provided in the District's tender of student records. After in-camera review of the documents and based on the social worker's testimony the hearing officer determined that the notes were personal notes and the content of the notes was contained in the student records presented in the Five-Day disclosures. The District was not ordered to produce the notes to Parent.

The parties provided oral closing argument and tendered written points of authority found in IHO Exhibits. The hearing closed.

### **ISSUES**

The issues to be determined are as follows:

Issue One: Whether or not the District violated its "child find" obligations under the IDEA by failing to identify and evaluate Student in all areas of suspected disability for special education and/or related services during the 2017-2018 and 2018-2019 school years?

Issue Two: Whether or not the Student was denied a FAPE by the District's purported failure to provide Student with an appropriate IEP during the 2017-2018 and 2018-2019 school years?

Issue Three: Whether or not the District erroneously found Student eligible for special education and/or related services under an Emotional Disability classification on or about August 15, 2019?

Issue Four: Whether or not the Student was denied a FAPE by the District's purported failure to adequately consider independent educational evaluations submitted by Student's Parents?

Issue Five: Whether or not the District offered Student a FAPE for the summer 2019 ESY, and 2019-2020 school year? If not, whether Student's unilateral placement at [REDACTED] is appropriate given Student's educational needs, the least restrictive environment mandate, and equitable consideration?

Petitioner seeks the following remedies:

i. an order requiring the District to assume full financial responsibility for all expenses associated with Student's placement at [REDACTED] including tuition, transportation and ESY services from the date of the decision until the end of the 2019-2020 school year, including ESY for summer 2020 or longer if determined appropriate by the Impartial Hearing Officer,

ii. an order requiring the District to develop an IEP for Student, in conjunction with her private clinicians and Parents, that includes primary eligibility as SLD, all appropriate goals, short-term objectives, direct instruction, supplementary aids, and related services in the areas addressed in this hearing request and placement at [REDACTED] in accordance with item f. i. above,

iii. an order required the District reimburse Parents for all costs associated with Student's placement at [REDACTED] including tuition, transportation, and ESY services from June 17, 2019 through the date that the District assumes prospective responsibility for this placement,

iv. an order requiring the District to reimburse Parents for the private neuropsychological, occupational therapy, and speech and language evaluations conducted since August 2017,

v. an order requiring the District to provide as compensatory education at least one additional year of placement at [REDACTED] including ESY, at District expense to account for its failure to provide Student with a FAPE over the course of the 2017-2018 and 2018-2019 school years, and

vi. Such other relief as the Impartial Hearing Officer deems appropriate.

### **FINDINGS OF FACT**

The following is based upon the hearing officer's recollection, personal notes and documentary evidence presented at the hearing. After considering all the evidence, as well as the arguments of both counsels, this Hearing Officer's Findings of Fact are as follows:

1. Student is a twelve-year-old, sixth grade student who attends HPDS. (Testimony of Mother.)

2. Student was diagnosed with by a development and behavioral pediatric doctor on September 30, 2011 with an expressive language disorder. (P49-0004.)

3. Student attended District schools since the 2015-16 school year, when she was a first grader. (P12.) In first grade, Student experienced academic struggles in reading, spelling and expressive writing. Parents didn't notice Student's academic struggles but looked for an evaluator after Student's teacher recommended consideration of retention of Student. Mother observed that Student could figure out things on her own. (Testimony of Mother, P3-1, and P12-2 to 3.)

4. Student was evaluated by Dr. B. Dr. B completed a Report of Neuropsychological Evaluation on March 21, 2015 (P3-1 to 14.) Parents were concerned about Student's progress in reading and spelling. They reported her math skills were developing normally. Student's printing is generally good. (P3-2.) Parents reported that Student likes school and has not refused to go to school, but she shuts down when she has to read, spell or write and is self-conscious about going to pull-out instruction and services. (P3-2.) Parents described Student as shy with peers and adults, even with relatives she knows well. Student prefers the company of boys over girls. (P3-2.)

5. Dr. B's report was based on psychological testing, self-measures, parent measures, and teacher measures. Dr. B's report states that Student had a history of expressive language delays. He indicates that Student is aware of the academic differences between herself and her classmates and experiences anxiety towards academically related tasks. Student is noted to be very shy and reserved. Dr. B notes that Student was seen for a single session, warmed up quickly, was responsive to questions. Dr. B noted appeared somewhat nervous during reading related activities. Student became tearful during a sight word task. Student was reluctant to attempt to read words she was unsure of and needed a fair amount of coaxing. Student was cooperative during all aspects of the evaluation. Dr. B notes a family history of literacy problems, social anxiety, expressive language delays and attention/concentration problems. (P3-0003.)

6. Dr. B found that Student's Full-Scale IQ was in the high average range of intellectual functioning. He cautioned that there was a statistically significant amount of variability between some of the individual factors, resulting in her uneven performance and that this score should be interpreted with caution. He notes her overall performance on verbal intellect tasks, working memory tasks, and her speed of process were within the average range. Student's overall performance on perceptual reasoning tasks was in the high average range. (P-0005.)

7. Student performed in the deficient range on measures assessing her ability to rapidly name numbers and in the borderline range for naming letters. Her ability to delete phonemes from words was in the low average range while her ability to blend syllables and phonemes was solidly average. On measures of reading fluency, Student was in the low average or deficient range. Her comprehension was in the low average range in reading but her listening comprehension was in the high average range. Student's spelling was marginally average. Her performance in math was average to low average. (P3-6 to 7.) Student's spelling skills assessed

in spelling subtests were marginally average and a brief assessment of Student's ability to compose sentences was in the low average range. (P3-0007) Dr. B notes that Student's teacher indicated that Student had difficulty coming up with topics to write about and doesn't try to spell words on her own. Student needed a log of praise and motivation to write. (P3-0004.)

8. Dr. B reviewed a 2007 Speech and Language Assessment provided by parents that indicated that Student's language comprehension fell well below average (21%ile) and expressive comprehension lower (12%ile) pm the PLS-4. Dr. B gave Student an expressive language disorder. (P3-2.) Dr. B notes that Student is exposed to Spanish and primarily English in home. (P3-1.) The report noted that Student displayed shyness, anxiety, and communication deficits when she was 3 years old. It also mentioned a prior unspecified multidisciplinary assessment, which found Student's language comprehension in the below average range and lower expressive language. (P3-0001 to 0002.)

9. Dr. B's report mentions an unspecified motor skills assessment resulted in a motor coordination disorder. No further details in support of this conclusion were provided in the 2015 report. (P3-0001 to 0002.) Student's performance on graphomotor tasks was average, handwriting is fairly legible and is completed without noted difficulty. (P3-10.)

10. Dr. B indicated that both Mother and teacher reports behavior scales indicated clinical range ratings of Student in Withdrawn/Depressed. (P 3-0001.) Measures of Student's attention were within the normal range. Her response speed was also in this normal ranges. (P3-0008) Student self-report at the normal or above normal in all domains (intellectual/academic competence, social competence, athletic competence, physical appearance, and behavioral conduct) and global self-esteem or self-worth except academic competence. (P 3-0008.) Dr. B indicated that the teacher reported that Student rarely participates in whole class discussions but likes to work in small groups with the teacher and a few other students. (P3-0004.) Mother reported that Student does not have friends, but also reported that she had a good friend who is also very shy and is close to a same aged cousin. Student was able to follow directions, was slow to start tasks, needed support to find a partner to work in groups, and preferred to work independently. (P12-0008.) Both mother and teacher reports indicated Student in clinical range for Withdrawn/Depressed. (P3-4.)

11. Dr. B diagnosed Student with a Specific Learning Disorder- with Impairment in reading: work reading accuracy and reading rate/fluency. (P3-0009.) Dr. B indicates that Students anxiety is consistent with a Social Anxiety Disorder. (P3-0010.)

12. Dr. B's recommendations contained in his March 2015 evaluation included an intensive reading program, text to speech software, nightly reading practice, math facts practice, math word problems read aloud, use of calculator or number table, direct instruction in written instruction, may benefit from Co-Writer 7, to see a professional that specializes in anxiety to give her strategies

to handle anxious feelings using a cognitive behavioral therapy approach, arrange play dates, get involved in organized groups such as Girl Scouts, give Student scripts prior to social interaction, provide Student with confidence building with books, and to model behaviors and thoughts related to making mistakes and recovery. (P3-0010 to 0011.)

13. Student was found eligible for special education and related services under the IDEA eligibility category of developmental delay in 2015 as a first-grade student. (P 12-6.) Student experienced struggles in reading, spelling, expressive writing, severe difficulties expressing herself, and that she bites her nails and chews on things. (P12- 4.)

Eligibility and IEP documents incorporated and attached Dr. B's 2015 report. (P12-0003.) IEP report indicates outside evaluation report diagnosis of Specific Learning Disorder and Social Anxiety Disorder (P12- 4.)

14. The May 18, 2015 Eligibility and IEP reported that Student's articulation, voice and oral-motor skills were within age/grade norms. On the TAPS-3<sup>11</sup> results were overall average. Student's subtest score were memory of words and numbers in the average range, comprehension in the high average range and sentence and reasoning in the borderline range. Both receptive and expressive language were in the average range. The LTP-3<sup>12</sup> results were overall average with scatter (subtest standard scores from 82 to 102). The report notes that Student demonstrated mild stuttering during some expressive language tests and that she reported stuttering at times. (P 12-0003.) Mother reported to the IEP team that Student had always been a quiet child, even as a baby. Mother reported that Student has good receptive language but had severe difficulties expressing herself, even in settings where she is comfortable. (P12-4.) District testing found that language processing scores exhibited a lot of scatter with borderline range scores on similarities, multiple meanings and attributes. (P12-3, 9.) The District noted Student stuttered mildly during some of the expressive language tests and that she reported that she did stutter at times. (P12-3.) In 2015, the IEP team concluded that Student would benefit from speech therapy to gain confidence and in speech production caused by anxiety. (P12-6, 8.)

15. Student's teacher rated her as having a very high level of emotional distress, getting along with other children, and impact of difficulties on her life as compared to her peers. Student was rated as slightly raised for overall stress, and average for behavioral difficulties, hyperactivity/concentration difficulties and kind and helpful behavior. (P12-0008.)

16. District reports indicate that Student has deficits in reading decoding, fluency and comprehension. She was able to write 1-2 sentences independently but struggles with free choice writing. It was noted that Student reversed letters when writing blends and digraphs and does not often complete assignments in reading or writing without 1:1 assistance. (P12-0008.)

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<sup>11</sup> Test of Auditory Processing Skills – third edition

<sup>12</sup> Language Processing Test – third edition

17. Student was provided with speech therapy goals and services for 30 minutes per week, social work goals and services to address her anxiety for 20 minutes per week, and special education direct reading instruction and intervention with researched based instruction with goals to increase sight word vocabulary, reading fluency and accuracy and math computation instruction for 450 minutes per week. She was to classroom accommodations including test items read aloud, directions simplified, extended time, use of manipulatives, and allowed gum/mints to ease anxiety and assessment accommodations of extended time, small group setting, reassurance and read aloud when appropriate. (P12-0014, 0016, 0017.)

**2017/2018 SCHOOL YEAR**  
**Fourth Grade**

18. Student's 2017 IEP provided her with direct reading instruction and intervention directed to reading decoding, and accuracy/fluency in a special education setting for 250 minutes per week and special education literacy support of a special education teacher in the general education classroom for 150 minutes per week with additional classroom aid support for 1350 minutes per week. All goals included baseline levels of performance, set criteria for mastery of benchmarks, and the means and schedule progress would be measured. Student was provided with classroom accommodations including extended time, being close to staff, alternate assignments, reduced amount of work, tests read aloud and phonics software small group reading instruction, alternate assignments, extended time and tests read aloud, responses can be dictated and utilize phonic software (JE 11 -1-3, 5, 6, 7, 9, and 10.)

19. In April 2017, Student participated in small group discussions and volunteered to read aloud in reading group. Student asked for help and worked well with peers. Student's shyness and level of discomfort can negatively impact her academic performance when reading or standing in front of the class. Student's reading skills in accuracy, rate, and comprehension, as measured on the Fountas and Pinnell Benchmark Assessments showed slow growth over the period beginning in January 2017 to April 2017 when she improved 2 levels, achieving level H. Her NWEA MAP (Northwest Evaluation Associations Measures of Academic Progress) scores in winter 2017 show that Student was performing in the low average ranges in Mathematics, low range in reading compared to her peers. On the AIMSweb winter benchmark measures, Student performed in the average range on the math computation measure and well below average on the reading fluency and math concepts and applications sections. (Testimony of DJ and JE 11-1-3.)

20. During Student's third grade year she mastered identification of second grade level sight words with 70% accuracy. (JE 11-1-4.) She was able read a first-grade passage of text at 41 words per minute ("wpm") with 95% accuracy from her initial rate of 23 wpm at 75% accuracy. (JE 11-1-15.) Student's progress with mastery of decoding skills was inconsistent, she demonstrated

mastery of the decoding CVC words in February, but her performance dropped to 53% in April. She demonstrated difficulty acquiring mastery of short vowel words with consonant blends never reaching more than 33% accuracy during third grade, with a performance drop in April. She demonstrated mastery of r-controlled vowel words in third grade by surpassing her goal of 50% accuracy by 17 percentage points in April. (JE 11-1-16.)

21. The District's April 25, 2017 IEP reports that speech therapy has benefitted Student's level of confidence. It indicates that Student participates in small groups and volunteers to read in her reading group. She asked for help and worked well with classmates. (JE 11-1-3.) The IEP did not review speech goals from the IEP developed on May 10, 2016 and no speech services provided for the coming year. (JE 11-1-14 to 17.)

22. Student wrote 1-2 sentences independently in first grade. She struggled with free choice writing. The District provides all students with Chromebooks. Student was given access to all grade level applications and a phonic program. (JE 11)

23. Student's 4<sup>th</sup> grade reading goals were to April read 1<sup>st</sup> grade text at rate of 77 wpm with 95% accuracy and to decode CVC words with 80% accuracy, words with short vowels and consonant blends with 70 % accuracy and r-controlled vowel words with 90% accuracy by April 2018. (JE 11-1-5 to 6 and testimony of JD)

23. In April 2017 Student was participating in small groups discussions and volunteering to read in her reading group. (JE 11-1-3.) Student joined the IMSA Fusion STEM club after-school. (R11-1.) Mother thought she was doing well that year. (JE 11-1-3.)

24. Student was due for her triennial reevaluation in mid-May 2018. (JE 11-1-1.) Mother made a request for an evaluation of Student on September 15, 2017 with the District. (JE 10-1-1.)

25. The District immediately responded to the request, agreeing to complete assessments in the areas of academic achievement, cognitive functioning, hearing/vision, and social emotional status. It noted that Student's communication skills and gross motor skills were age appropriate and that her handwriting was legible. The District's September 2017 reevaluation plan for Student included assessment in the areas of academic achievement, cognitive functioning, vision and hearing, and social/emotional status. The reevaluation plan indicated that Student did not demonstrate need in functional performance noting her focus, work habits and ability to seek help. The plan notes that Student's speech/language skills were determined to be age appropriate and that she had previously received speech/language service but was released from services because her skills were determined to be age appropriate. The plan notes Student has age-appropriate gross motor skills, her handwriting is legible with continued letter reversals. (JE 10-1-3 to 4.)

26. The District provided parent with an Identification of Needed Assessments form and Consent for Evaluation form the same day. (JE 10-1-1 to 4 and testimony of MC.)
27. On September 18, 2017, JD sent a follow up email to Mother concerning consent. The District was informed by Mother that Student would be evaluated by Dr. B on September 30, 2017. Mother indicated that she was unsure if the school could also test Student. (R11-1.) Mother did not sign consent for the District's evaluation until after Dr. B completed his assessment. (Testimony of JD, JE 10-1-5 to 6, R11 – 1, JE 52-1-2 to 8.)
28. Mother provided written consent for the District's evaluations on October 2, 2017 and a list of evaluations conducted by Dr. B so that the school would not duplicate the tests conducted on September 30, 2017. Mother did not make any changes to the Needed Assessment forms. (JE 52-1-2 to 8, testimony of Mother and JD).
29. The District completed its evaluation of Student and convened an Eligibility conference on November 30, 2017. The evaluation components included cognitive functioning, academic achievement, psychological processing, vision and hearing screening, as assessed by the WISC-V, achievement assessed by WIAT-III, WJ-IV, ACHV, CMS-III, TOWRE, CTOPP-2, WRANVA, VMI, CPT-II, TEA-ch, Child Depression Inventory-2, RCMAS-2, Achenbach-Child Behavior Checklist, Achenbach Teacher Report Form and BASC -3, updated social history, grades, AIMSweb testing, parent and teacher reports. (JE 9-1-1 to 38.) The November 30, 2017 IEP team included Mother, school psychologist as LRE representative, a regular education teacher, MC, Social Worker, and JD, special education teacher. (JE 9-1-1.) The team review its evaluations and Dr. B's September 30, 2017 Neuropsychological Evaluation report. (JE 9, JE 26, and JE 27.)
30. The team reviewed Dr. B's 2017 report and report the WISC-5<sup>th</sup> scores, noting all to be in the average range. The team attached the report to the Eligibility Determination. (JE 9-1-19 to 32.)
31. Mother expressed concern about Student's performance in reading, spelling and written expression, organizational skills at home and her need for stronger foundational skills for coping with anxiety. (Testimony of Mother, MC, and JE 8-1-3.)
32. The District adopted Dr. B's September 30, 2017 Report and incorporated it into the Eligibility Conference documentation. (JE 9-1- 19 to 32 and JE 27.) Dr. B found Student's overall intelligence, verbal intelligence and expressive vocabulary in the average range through his IQ testing. (JE 9-1-23) Student's visual processing, spatial processing and working memory skills were average range. (Testimony of Dr. B and JE 9-1-24 to 27.)

33. Dr. B. found Student was struggling with and making slow progress in reading. Her sight word reading, word attack, and reading speed abilities all fell in the below average range and ranged from deficient to low average. Student's reading scores were at least two grade levels below her age/grade peers. Student's reading comprehension was also in the deficient range and corresponded to beginning second grade level. Her listening comprehension was in the average ranges. Her dropping scores confirm that Student is making slow progress. Dr. B. diagnosed Student with a Specific Learning Disorder with Impairment in Reading: word accuracy, reading comprehension and reading rate/fluency. (Testimony of Dr. B. and JE 9-1-23 to 32.)

34. He found that graphomotor skills and fine motor and visual-perceptual skills within the average range. (JE 9-1-24.) He notes that Mother "elected not to have math or written expression assessed in this evaluation," but indicates that Mother and her teacher report Student's written expression is not well developed and falls below grade level. (JE 9-1-27.) Dr. B recommended that Student's writing skills be evaluated. (JE 9-1-28.)

35. The District conducted an academic achievement testing which was reviewed by the team. Student was given the Wechsler Individual Achievement Test- Third Edition (WIAT- III) that was given by JD on October 31, 2017. Student performed in the low range in Total Reading, Basic Reading and Reading Comprehension and Fluency (JE 9-1-2 and JE 26-1-3.) In Math on the WIAT-III Student performed in the average range in Mathematics and Math Fluency. She performed in the average range on Sentence Combining and in the below average range on Sentence building. (JE 26-1-3.)

36. Dr. B found Student to be an extremely anxious girl. Her anxiety is related to social situations and performance anxiety. Dr. B diagnosed her with Social Anxiety Disorder. (Testimony of Dr. B and JE 9-1-28.) District's social/emotional assessments were based on rating scales, the Behavior Assessment System for Children (BASC-3) which were completed by Mother and Student's general education teacher. Mother reported scores in the at-risk range on the anxiety, adaptive skills, leadership, communication, emotional self-control, resiliency and in the clinically significant range for withdrawal, social skills, and developmental social disorders. Student's teacher rated her in the at-risk range for anxiety, learning problems, and leadership and in the clinically significant range for withdrawal. (Testimony of MC and JE 9-1-8 to 11.)

37. From April 2017 to November 2017 Student progressed one level in Fountas and Pinnell Benchmark Assessment from Level H to I. Her reading rate on first grade text moved from 41 wpm to 55 wpm since April. Her accuracy on first grade text moved from 95% to 97% during the same period. While Student continued to struggle with fluency but was noted to have improved. Student's decoding improved during the same period from decoding CVC words with 53% accuracy to 80% accuracy, and single syllable short vowel word with consonant blends from 27% accuracy to 92% accuracy Her decoding single syllable words with long vowel or

variant vowels remained at 60% accuracy during this period. This IEP established a baseline for decoding of and decoding low frequency vowel and consonant spellings at 27% accuracy. Rates of expected progress on goals were based on national norms of expected rate of progress. She continued to perform in the low average ranged in mathematics and the low range in reading on NWEA MAP testing that compared her to her peers. Student's fall AIMSweb benchmark measures were in the average range on math concepts and applications and well below average in reading fluency and math computations. Student's reading Lexile score was 165L. (JE 11-1-5, 6, JE 9-1-16, and JE 8-1-3, 5, 6, and 7, and testimony of JD.)

38. The IEP team found Student was eligible for special education and related services under the category Specific Learning Disabilities. (JE 9-1-1- to 9-1-6, and testimony of Mother, MS, and JD.)

39. Dr. B recommended that Student's reading service be intensified, that she would benefit from a private reading tutor using a program that is scientifically based and teaches phonological awareness, decoding and give repeated opportunities to apply the skills to reading connected text. He recommended that Student practiced reading 20-30 minutes daily with an adult with her alternating reading a page at a time. Dr. B recommended plenty of time on tests that have a strong reading component. Dr. B recommended that a reader be provided to Student for math tests. He also recommended that Student is given extended time on test of at least 1.5 time on all timed tests. She should also be allowed to take tests in a quiet room without distractions. (Testimony of Dr. B and JE 9-1-28.)

40. Dr. B suggested that Student may benefit from text to speech assistive technology that allows her to read along with the text. Parents encouraged to request an assistive technology assessment. Dr. B recommended that Student's writing skills be evaluated and that she be provided with writing intervention services. (Testimony of Dr. B and JE 9-1-28.)

41. Dr. B recommended that Student be seen again for counseling at school and that she is seen privately in therapy, specifically cognitive behavior therapy. He recommended a consultation with a psychiatrist to consider medication for anxiety (Testimony of Dr. B and JE 9-1-29.)

42. Dr. B recommended that Student be allowed to give class presentations to a prompter or allowed to tape presentation for consideration due to her high levels of anxiety. (Testimony of Dr. B and JE 9-1-29.)

43. The Team developed new goals for Student in reading rate/fluency, phonics and word recognition, and social/emotional related to anxiety. (JE 8-1-5 to 8.) These goals were adjusted to include reading rate/fluency on first grade text at 87 wpm with 98% accuracy (JE 8-1-5.) Her

decoding goals were changed to target single syllable word with long or variant vowels (baseline of 60 % accuracy) with a target of 80% accuracy, and low frequency vowel and consonant words (baseline of 27% accuracy) at 50% accuracy. (JE 8-1-6.) Rates of expected progress on goals were based on national norms of expected rate of progress. Student's social work goal was to identify anxiety provoking situations with staff prompting and cueing and to practice two appropriate coping strategies with increased frequency and decreased prompting with independent performance as the end criteria. (JE 8-1-7). (Testimony of JD.)

44. Student was given accommodations for the classroom and assessments including dictation of responses, assessment in small groups, use of text-to-speech, encouragement of best effort, student choice of when to present to class and peer support during presentations, extended time, up to 1.5 times for assignments, assessments and reading to self, questions read aloud, classroom tests read aloud, dictated responses (except in writing) and in small group. Participation in district wide assessments with no modifications or accommodations. Student would be given accommodations for the PARCC. (JE 8-1-8.) In addition, the amount of work on assignments reduced in the general education curriculum. (JE 8-1-10.)

45. Student was given literacy support in the general education classroom by the special education teacher for 30 minutes per day and by a teaching assistant for 15 minutes per day. She was given 75 minutes per day of pull out reading/language arts instruction in the resource special education setting. All other education was in the general education setting. (Testimony of JD and JE 8-1-11.)

46. Student was given 15 minutes per week of social work support to work on goals to develop self-awareness and self-management skills with benchmarks to address identifying anxiety provoking situations and practice of appropriate coping strategies with adult prompting. (Testimony of MC and JE 8-1-7, and 11.)

47. Student was also provided a health plan that allowed her to visit the social worker as needed to address her headaches. (JE 6, JE 7, and testimony of MC.) Student did not complain about headaches to her special education teacher. She used a water bottle from home or was provided one by the school, if needed. (Testimony of JD.)

48. During the Student's language arts block and small group instruction she received instruction from her special education teacher in reading comprehension, reading fluency, and written expression in addition to her IEP goals. Literacy support of Student by JD, the special education teacher occurred as push-in and pull-out services. In addition, the classroom aid worked with Student on Read Naturally to support phonics and reading fluency and on Lexia, a research-based computer phonics program. Student acquired skills and made progress by achieving many of her goals. (Testimony of JD.) These programs were loaded onto Student's

school issued Chromebook. All district students are issued a Chromebook loaded with various educational applications, including speech to text applications and word processing. In addition, any additional applications required by student IEPs are added to individual student's Chromebooks and students provided 1:1 training in the use of these applications by the AT staff. (Testimony of EB.) In January, 2017 the District provided Student with alphabet charts, word banks, audiobooks with print copy, and Bookshare in school. (P49-0001.) Emails indicate Bookshare was used by Student in October 2018. (R 24-1.)

49. Throughout Student's fourth grade year she had a number of missing assignments from time-to-time. With support from home and school the items were completed and did not impact her academic progress and there was no penalty for late work. (Testimony of JD.)

50. Student's mother reported to the school that Student had sensory issues such as noise, however, Student never complained, and teachers did not observe signs of sensitivity. (Testimony of JD.)

### **2018/2019 SCHOOL YEAR** **Fifth Grade**

51. Student was enrolled in a general education 5<sup>th</sup> grade classroom with 22 other students. The class had a full-time teaching aid all year. She was well behaved but had minimal participation in large group discussion. Her participation in small groups was better. Student had a small group of friends who she played and talked with at school. She ate lunch in the nurse's office for most of the year due to her anxiety about eating in front of others but at the end of the year she voluntarily returned to the lunchroom. Student participated in general education reading, math, science, social studies and writing, with special education push in support for language arts. Student worked in small group with teaching aid to reread materials, for assistance with understanding and to talk with students in the group. Student understood the grade level content and demonstrated this understanding by passing class tests. She participated in art, music Spanish and PE with her class peers and did not have problems transitioning to those classes. (Testimony of JF.)

52. At the beginning of the year Student was not turning in her homework. After the planner check was implemented, she was more consistent with turning in homework and asking for help. Student used her student planner or the planner page on the Smartbook app with the help of JD to keep track of homework assignments. JD or the teacher aid checked out Student daily. Student did not always complete her CNN10 assignments or her reading logs, both required written responses and the reading log was to be done at home and turned in on Friday. The amount of written responses was reduced from 25 lines to 10 lines for Student as an accommodation. Later in the year when Student was able to type, her responses increased. The math program used in

the classroom, JUMP, is a research-based multisensory program. ISL, a research-based program was used to remediate LD students in Math. (Testimony of JF.)

53. Student did not react adversely to touch or noise in class. JF did not notice signs of anxiety in Student's behavior. Student told JF that cinnamon essential oil smell irritates her nose. Student reported one headache to JF. Student was sent to the nurse per her health plan, she got an ice pack and returned to class. Student is soft spoken. (Testimony of JF.)

54. Student's handwriting is legible. (Testimony of JF and JD.) Student had and used Bookshare, a text-to-speech with read long program on their Chromebooks. (Testimony of JD, R18, and R24-1.)

55. Student participated in Band, playing percussion, Security Council and IMSA Fusion (Testimony of Mother, DJ and R23-1.)

56. In early October Mother asked to meet with the special education teacher, social worker, and general education teacher concerning Student's transition to 5<sup>th</sup> grade. Mother was concerning about poor grades, anxiety and scheduled social work time, additional supports, homework, remote access and to consider modifications in the least restrictive environment. As a result of the meeting, the District implemented Mother's requests to change Student's spelling words to match her vocabulary words, that she was given individual help with key concepts research, that writing notes be sent home and assignments limited to 2-3 sentences and that the reading log be modified to allow for less sentences from student. In addition, Mother was given the password for all student accounts. (Testimony of JD and R 23-1.) In response to Mother's concern about access to social work, Student's Monday time was rescheduled on Tuesday to avoid days off school and increase the amount of time with social worker. (Testimony of MC.)

#### November 28, 2018 IEP Meeting

57. The IEP team met for Student's annual review. Mother was concerned about Student's anxiety, reading and lack of progress and wants SW increased and wants spelling to match resource work. (JE 5-1-3.)

58. Student's increased involvement in school, including extra-curricular activities and in small groups discussion was reported. The team reviewed Student's present level of academic performance and review the results of the questionnaires completed by her teachers on 11-18-2018. Teachers rated Student is close to average in total difficulties, emotional problems/difficulties, conduct problems/difficulties, hyperactivity/concentration, peer problems, and prosocial/kind behavior. She was rated as slightly raised in emotional problems. (JE 5-1-3 and Testimony of MC and JD.)

59. During the meeting, Mother requested an AT referral. (JE 5-1-3 & 14.) The District completed the referral for the Assistive Technology assessment after Mother signed consent for the evaluation. (Testimony of EB and JE 5-1-20.)

60. Goals developed for Reading fluency, increased to 2<sup>nd</sup> grade level with increasing words per minute benchmarks (JE 5-1-5), reading decoding goal increased to single syllable words with low frequency vowel and consonant spellings, variant vowels, and multisyllabic decodable words (JE 5-1-6), and a social emotional goal addressing self-awareness and self-management (JE 5-1-7). Student was provided with special education reading in special education setting, literacy support by teaching assistant in general education setting, and 30 minutes per week social work services in special education setting. (JE 5-1-11.) Classroom accommodations and modifications/supplementary aides and services for classroom and classroom-based assessments included small group setting, close to teaching staff, dictated responses (except in writing) use of text-to-speech devices, encourage best effort, student choice of when to present to class and allowed for peer help with presentations, extended time for tests, reading to self and assignments up to 1.5 times more, items read to Student, and dictated responses on tests. Student was to participate in district wide tests without accommodations and was given accommodations on state-wide tests as allowed. (JE 5-1-7 to 8.) In addition, Student was allowed to use the restroom in the nursing office when needed, and amount of work reduced. (JE 5-1-10.)

61. The IEP team offered Student other placement option to allow for additional targeted reading interventions. (Testimony of JD and JE 5-1-14.) Wilson reading services were specifically offered to Student. (Testimony of JD.) These services were available at Monee Elementary School. Mother asked for time to consider this option because it meant Student would change schools and she was concerned that Student's anxiety was high. (Testimony of JD, MC, and Mother.)

62. An AT assessment/consultation was completed for Student on February 8, 2019 by the SPEED S.E.J.A. #802, the District's special education cooperative. The AT assessment was requested to address areas of written work, including spelling and written expression, support for completion of written work, to provide ways to modify work without changing the content or task to increase Student's success with independent work completion and to determine the best options for reading due to Student's difficulty in decoding and fluency. (JE 19-1-1 and JE 4-1-22 to 26 and testimony of EB.) The goal of the assessment was to determine assistive technology to assist Student with written work, spelling, grammar and written expression, to improve work completion use of tools and supports for success throughout the school day, modification of work without changing the content or task to increase Student's independence in completing assignments and to determine best options for reading due to Student's difficulty with decoding and fluency. (JE 19.)

63. The AT report based on observation of Student and consultation with team. The AT evaluator used classroom observation rather than typical interview due to Student's anxiety with unfamiliar people. (JE 19.)

64. AT recommendations for Student include use of Co-Writer Universal for word prediction, grammar prediction, spelling and text to speech and auditory feedback for playback. Snap & Read was recommended to allow Student to independently read text from worksheets, documents and books and items on Chromebook, she can select text and add it to her notes, text readability can be changed to increase understanding of text. Use of Kami, a web-based tool that allows viewing of resources online and integrates with Google Classroom and Google Drive for easy sync of completed assignments. This program features PDF and document view, highlight, add notes, strikethrough, underline, auto save Google Drive and text to speech. Bookshare was recommended to allow for read anywhere with audio, see and follow text feature, ability to adjust speed, font and color, bookmark and notes, study tools. (JE 19.)

#### **February 14, 2019 IEP**

65. On February 14, 2019 an IEP meeting was convened to review the review the February 8, 2019 AT assessment of Student conducted by SPEED. The team reviewed the AT report and recommendations include use of Co-Writer Universal for word prediction, grammar prediction, spelling and text to speech and auditory feedback for playback. Snap & Read was recommended to allow Student to independently read text from worksheets, documents and books and items on Chromebook, she can select text and add it to her notes, text readability can be changed to increase understanding of text. Use of Kami, a web-based tool that allows viewing of resources online and integrates with Google Classroom and Google Drive for easy sync of completed assignments. It features PDF and document view, highlight, add notes, strikethrough, underline, auto save Google Drive and text to speech. Bookshare was recommended to allow for read anywhere with audio, see and follow text feature, ability to adjust speed, font and color, bookmark and notes, study tools. (JE 19.) The team adopted the recommendations of the AT report. (Testimony of EB, and JE 4-1-3, 17.)

66. Teachers reported that Student was making growth in academics, asked for assistance and homework was getting turned in. (JE 4-1-17.) In reading Student progress from Fountas & Pinnell level J to K, which is the end of second grade level. Her MAP scores improved in mathematics by 4 points since fall and her reading increased 3 points. On AIMSweb she read grade level text at 55% wpm with her score falling well below average for her age. This represents an increase of 6 wpm on grade level texts since fall 2018 benchmark assessment. Her performance on Mathematics Concepts and Applications and Math Computation were in the average range. Her reading Lexile score was 375L. (JE 4-1-3 and JE 33.) Her Lexile score improved 210 points since 2017.

67. The IEP team developed goals in Reading fluency (JE 4-1-5), decoding (JE 4-1-6), reading comprehension (JE 4-1-8), written expression (JE 4-1-7), and social emotional self-awareness and management and self-advocacy (JE 4-1-9 & 10). All goals included baseline levels of performance, set criteria for mastery of benchmarks, and the means and schedule progress would be measured. Student was given accommodations and modifications on classroom assessments including dictation of responses, small group test setting, text-to-speech devices, encourage best efforts, student choice for when to present to class and peer support, extended time up to 1.5 times for assignments, assessments and reading, questions read aloud. (JE 4-1-11) Student would take district-wide assessments without accommodations but was given accommodations for status assessments. (JE 4-1-11 to 12.) Student was also given as supplemental aids and services the ability to use the restroom in the nurse's office, to eat lunch in a separate location with peers of choice, introduction to middle school social worker prior to first day of middle school, additional opportunities to walk through her middle school schedule of classes, determine a location she can seek assistance when needed and work with her locker. Classroom aide present throughout the day to support classroom and students. Use of a daily log template to monitor self-advocacy (Testimony of MC, JE 4-1-13. R 47.)

68. Student was given supplemental aids for general education classes including use of assistive technology , extended time, small group, close to teaching staff, reduced amount of work, use of planner for organization, test time extended, tests read aloud, limited choices for decision making. (JE4-1-14)

69. Student was to receive 75 minutes per week of reading, an increase of 15 minutes per day, in the special education setting and 30 minutes per week in pull out social work services. (JE 4-1-14, 17.)

70. The District recommended, and Mother provided consent for the vision itinerant to consult with the IEP team for Student. (JE 4-1-17.)

71. Mother asked about targeted reading program for the summer. The team indicated that Student did not demonstrate significant regression over the summer and would not require ESY services for recoupment purposes. (JE 4-1-18.)

72. Team reviewed placement options including at Monee Elementary where Student could receive a specialized reading program, the Wilson Reading program and special education with a lower student staff ratio. Meeting notes indicate that Mother is considering but was reluctant to change programming due to Student's anxiety. Mother wanted to consult with her outside specialists. (Testimony of MC, Mother, EB and JE 4-1-18.)

73. On May 2, 2019 Mother provided the District with new outside evaluations through their Parents' attorney. The District was given a Neuropsychological Evaluation completed by Dr. B on December 3, 2018, an Occupational Therapy Report completed on November 9, 2018 and a Speech and Language Evaluation completed on March 2, 2019. (R35-1).

December 3, 2018 Report of Neuropsychological Re-evaluation by Dr. B

74. Dr. B's report was based on a review of his 2015 and 2017 reports, including past diagnosis, current concerns of parents, a recent IEP<sup>13</sup>, the completion of two assessments, the Woodcock Johnson Tests of Achievement- Fourth Edition- Form B and Test of Word Reading Efficiency (Form B), both measures of academic achievement. These tests were completed in a single one-hour testing session (Testimony of Dr. B and JE 20-1-3 to 4.) Parents secured the reevaluation due to their concerns about Student's level of anxiety, and her lack of progress in reading, writing and spelling. (JE 20-1-2)

75. Dr. B reported that Student's reading skills consistently fell in the below average range. He notes that her reading skills are about 2 to 2.5 grades below her expectations. Dr. B reaffirmed his previous diagnosis of Specific Learning disabilities with impairment in reading: reading accuracy, reading comprehension, and reading rate/fluency. (Testimony of Dr. B and JE 20-1-3 to 5.)

76. Although Student's sentence writing and spelling scores were found to be in the low average range Dr. B gave her a diagnosis of specific learning disabilities with impairment in written expression: spelling accuracy, clarity of written expression. (JE 20-1-5.)

77. Student performed in the average range in Math calculation and applied problems. She performed in the low average range in sentence writing and spelling. Her performance was in the borderline range in reading fluency, sight words (on timed and untimed test) non-sense word decoding, word attack, passage comprehension, spelling, and math fluency. Based on her performance on math subtests, Dr. B diagnosed Student with Specific Learning disabilities with impairment in math: accurate/fluent calculation. Dr. B also diagnosed Student with Specific Learning disabilities with impairment in written expression: spelling accuracy, clarity of written expression. (Testimony of Dr. B and JE 20-1-3 to 4.)

78. Dr. B notes that Student continues to be a highly anxious girl, especially in social situations. He noted that she is shy and anxious around people, even those familiar to her and

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<sup>13</sup> The IHO notes that the report indicates that the school document reviewed was dated 11/28/2010, but the information subsequently reported is consistent with the contents of the IEP dated 11/28/2018. The IHO believes the date contains a typographical error.

she is afraid of making mistakes and performing in public. Dr. B affirmed his earlier diagnosis of Social Anxiety Disorder. (JE 20-1-5 to 6.)

79. Dr. B noted that Student is still learning to read, while her peers are reading to learn. Dr. B's report states, "[a]lthough her rate of learning in reading is not declining since she was assessed on year ago in 2017, her reading trajectory has not changed." Dr. B noted his concern that Student is stagnant with respect to her progress to "bridge the gap" between her literacy skills and those of her non-disabled peers. (Testimony of Dr. B and JE 20-1-6.)

80. Dr. B recommended Student receive intensive reading services using a program that is scientifically based and has a strong empirical support such as Wilson, Orton Gillingham, Slant, or Lindamood Bell. (Testimony of Dr. B and JE 20-1-6.) Dr. B also recommended Student preview subsections of reading prior to "cover-to-cover" reading and preview questions or requirements for assignments based on reading material before completing the reading, text to speech assistive technology, and an assistive technology assessment. Dr. B recommended that reading materials such as math word problems to Student be continued. He recommended that Student have class notes available to her rather than having her take notes herself. He recommended extended time, at least 1.5 times, on tests with a reading component. (Testimony of Dr. B and JE 20-1-6 to 7.)

81. Dr. B recommended direct instruction in developing logical order, transitioning between components, developing elaboration, and avoiding repetitive material. (Testimony of Dr. B and JE 20-1-7.)

82. Dr. B recommended access to a calculator or numbers table for math work completion, especially when learning new concepts, and recommended extended time, at least 1.5 times, for math tests. Dr. B recommended drills and repetition to learn math facts. (Testimony of Dr. B and JE 20-1-6 to 7.)

83. Dr. B recommended that Student continue in therapy at school and privately to address her significant issues with anxiety. He specifically recommended use of cognitive-behavioral approaches for the learning of new strategies for managing anxiety with Student. He further suggested teaching student progressive relaxation techniques, guided imagery, creating a hierarchy of stressors and progressively employing systematic desensitization techniques, using thought-stopping and alternative thinking approaches to catastrophizing that may be present. (Testimony of Dr. B and JE 20-1-7.) Dr. B recommended that Student be allowed to give class presentations before a prompter or to tape the presentation to help ease her anxiety. He recommended that giving her choice concerning when to present should be continued. (Testimony of Dr. B and JE 20-1-7.)

84. Dr. B also recommended placement of Student in a school designed for students with learning disabilities, ██████████ to immerse her in a program designed to address her language arts weaknesses. (Testimony of Dr. B and JE 20-1-6.)

85. Mother paid \$200.00 to Neurobehavioral Associates, P.C. for the December 3, 2018 Neurobehavioral Evaluation. (Testimony of Mother and P54.)

#### Outside Speech and Language Diagnostic Evaluation

86. Student was evaluated by ML, a private speech language pathologist, after referral by parent's attorney to identify her strengths and weaknesses in receptive and expressive oral and written language skills on January 10, February 1 and March 2, 2019. (Testimony of ML, P 52, and JE 18-1-1.)

87. While Student was in 5<sup>th</sup> grade at the time of this evaluation, ML reviewed a school report from January 6, 2017 which was the middle of her third-grade year and two years old at that time. (JE 18-1-1.) In addition, an IEP developed on February 14, 2019, in the middle of the test dates, was reviewed. (JE 4 and testimony of ML.)

88. During the evaluation Student often answered with 1 -or 2-word answers, did not elaborate when asked to, did not engage in social chit chat with the examiner, had poor eye contact but was polite and demonstrated a "low affect." Student worked for three two-hour sessions without taking a break or accepting water or candy offered to her. Student was described has having a flat affect during the session. Despite these signs, ML judged the results of her evaluations to be "an accurate measure of the targeted tasks." (Testimony of ML and JE 18-1-3.)

89. ML administered the Peabody Picture Vocabulary Test-4, Expressive Vocabulary Test -2, Clinical Evaluation of Language Fundamentals – 5, and Clinical Evaluation of Language Fundamentals – 5- Metalinguistics. Student's overall performance on these evaluations was average or above average. (JE 18-1-4 to 17.)

90. ML administered the Clinical Evaluation of Language Fundamentals – Fifth Edition (CELF-5) to the Student. Student's scores on the CELF-5 subtests were in the average or above average range, with the exception of the Pragmatics profile. The Pragmatics Profile was low. (Testimony of ML, JB and JE 18-1- 4 to 10.) ML completed the Pragmatics Profile, a tool designed to gain information about the student's verbal and nonverbal pragmatic skills that may influence social and academic communication, with "input" from Student's Mother. Mother was given a profile to complete, but it was not returned to ML. ML did not seek any information from the school. ML completed the profiled based on her six (6) hours of testing of Student. (Testimony of ML.) JB testified that the Pragmatics Profile of the CELF-5 results are of concern

in that the Pragmatics Profile is a checklist of speech intentions that are typically expected skills for social and school interactions. The profile is to be completed by the examiner after observing the student's communication behaviors and with input from parents, teachers or other informants who provide information to evaluate verbal and nonverbal contextual communication on checklist items not observed by examiner. Many of the items rated are not observable behaviors in a clinical setting and no input was obtained from school or parents as mother did not complete the rating. The CELF-5 manual directs the examiner to "ask for input to rate the student on skills you have not personally observed." (R49-1.) ML did not do this. In addition, the examiner noted Student's lack of eye contact during the exam. The CELF-5 manual indicates that Hispanic or Latino children may look away or lower their head when talking to adults as a sign of respect. This and other potential cultural factors were not discussed in the report and may have an impact on the results. (Testimony of JB and R49-2 to 3.)

91. JB noted that the Meta-Pragmatics Index which includes tests of inferences and conversational skills results were incongruent with the results of the Pragmatic Profile. (Testimony of JB.) The Meta Pragmatics Index was in the above average range. (JE18-1-9.)

92. Based on ML's experience with Student, she concluded that "it is essential that Student receive social language therapy in order to learn how to appropriately advocate, initiate and engage in conversations using an appropriate loudness level on order to give and share information. (JE 18-1-8 and Testimony of ML.)

93. The Test of Written Language-4 (Form A) was administered to Student. Student's overall performance was largely below average with poor punctuation and very poor spelling. (JE 18-1-20.) Based on this assessment, ML recommended intensive research based written language support for no less than one hour per day for five days per week with a licensed and certified speech and language pathologist. (Testimony of ML and JE 18-1-11.)

94. ML also administered the Test of Integrated Language and Literacy Skills, a standardized norm-referenced test. Student's phonological, decoding, reading fluency, written expression, vocabulary, story retelling, reading comprehension, and written expression- discourse level and sentence level, digit span forward and social communication were found as below average. Student's listening comprehension, following directions, delayed story retelling and digit span backward were in the average range. (Testimony of ML and JE 18-1-13 to 15.)

95. ML diagnosed Student with Mixed Receptive Expressive Language Disorder, Phonological Disorder, Specific Learning Disorder with Impairment in Reading and Disorder of Written Expression. (Testimony of ML and JE 18-1-16)

96. ML recommendations for Student were internally inconsistent. In the body of her report she recommends that Student receives intensive research based written language support for no

less than one hour per day for five days per week with a licensed and certified speech and language pathologist. (JE 18-1-11.) In another portion of body of the report, ML recommends that Student receives an Orton-Gillingham Program to support Student's substantial phonological deficits, specific language therapy on vocabulary/semantic language development, including multiple meaning words, 90 minutes per week of speech and language therapy to address expressive language impairment. These recommendations encompass a total of 590 minutes per week of speech and language therapy. (JE 18-1-13, 17.)

97. In the recommendations section, she recommends one hour daily of learning support within school setting using Framing Your Thoughts and Orton Gillingham programs to provide a multi-sensory methodology. Next, ML recommends that Student participates in Visualizing and Verbalizing by Lindamood Bell to address her specific language deficits and challenges with reading comprehension. Finally, ML recommends no less than 120 minutes per week of speech and language therapy to address vocabulary/semantic skill development, syntax/grammar, phonological skill development and social communication in individual and group setting. These recommendations are at least 620 minutes per week, but there is no indication of a recommendation of time to allocate to the recommended Lindamood Bell programs contained in the recommendations. (JE 18-1-17 to 18.) At hearing ML testified that she was recommended a total of 120 minutes per week of speech and language therapy, 30 minutes of Visualizing and Verbalizing and two 45-minute sessions to cover the remaining areas of language deficit. (Testimony of ML.)

98. JB noted that ML recommendations for Student to address the diagnosed language disorder were consistent with the service guidelines for "severe" language disorder. JB notes that Student's scores were largely within the average range and none of the scores were 2.5 standard deviations below the mean as required by the Illinois Speech-Language Pathology Eligibility Matrix and Workload Analysis Guide. Further JB disagrees with the diagnosis of a language disorder because all Student's language scores were in the average range. (Testimony of JB, JE 18 and R51-6.) ML's recommendations for the Phonological disorder follows the pattern above. The recommended number of service minutes is consistent with a severe phonological diagnosis. JB disagrees with this diagnosis for Student as it is an articulation disorder and there is no record of any reported difficulties with articulation noted in school or at home. (Testimony of JB, JE 18, and R51-3.)

99. JB notes that in the school setting speech-language pathologist do not typically work on writing with students. In a clinical setting, a speech-language pathologist may work on writing with a child. JB also disagreed that Student should be eligible under the Speech/language category because all of her language scores were average. (Testimony of JB.)

100. Mother paid a total of \$2,100.00 to Comprehensive Speech and Language Pathology LLC for the Speech and Language Evaluation conducted on January 9, 2019, February 1, 2019 and March 2, 2019. (Testimony of Mother and P53-1 to 3.)

#### Outside OT Report

101. On November 9, 2018 OT evaluation by Erin Anderson and Associates. (JE 22-1.) (R53-1.) Student was referred for this evaluation by the family attorney. The report states that the reason for the occupational therapy evaluation are parent concerns about overall anxiety, reading, writing, spelling and lack of talking. The evaluation components included an observation in the clinical setting, Sensory Profile -2, DTVP-3, and the Print Tool. (JE 22-1-1.)

102. The evaluation report indicates that Student demonstrated good effort, transitioned easily, but never warmed up to evaluator, used 1-2-word utterances, decreased eye contact, not easily distracted by loud noises. Student was given option of gum and fidgets, etc. Student declined all offers. Student did not wear her glasses during the OT evaluation. (JE 22-1-1.)

103. The report notes Student's range of motion and muscle tone was within normal limits. Her strength in upper extremities was adequate. Student is noted decreased strength in postural muscles was exhibited during static balancing tests of supine flexion and prone extension. The report does not indicate the impact of these findings on her performance or needs in the educational environment. (JE 22-1-2.)

104. Student demonstrated a rounded posture and propped her head during picture scanning activities. Student demonstrated poor sitting posture in a large office chair, leaning intermittently on the table, which is reported to indicate decreased postural stability. Student uses a quadripod grasp while writing. She demonstrated atypical alignment of the paper during testing and demonstrated excessive body movement while seated. She demonstrated decreased lumbrical strength during writing tasks, applying inconsistent pressure while writing. (JE 22-1-3.)

105. Student demonstrated appropriate gross motor skills. Student appears to have some issues processing vestibular input appropriately. The examiner noted that after being given linear movement, which she tolerated well, her affect improved, she smiled more often, and she provided more details in her verbal responses. (JE 22-1-4.)

106. Per parent report, Student demonstrates proprioceptive processing concerns in that she stamps her feet when walking, bites her nails, uses a heavy blanket to sleep. Parents report that she is a picky eater, tenses when patted affectionately, has negative reactions to unexpected touch, avoids busy/unpredictable environments which raise concerns in tactile processing.

Parents reported that Student gets lost easily when reading and is overall sensitive to light. (JE 22-1-4.) Student was able to follow auditory directions and was not distracted by other noises during the evaluation. Parents report that she overreacts to unexpected noises, avoids eye contact when listening and speaks softly. The report notes these are concerns in auditory sensory processing. (JE 22-1-5)

107. A Sensory Profile-2 completed by her Mother indicates that Student's responses to Oral sensory processing, attentional responses associated with sensory processing, avoiding/avoider, sensitivity/sensor, and registration/bystander were all more than others. Student's social emotional response to sensory processing was much more than others. (JE 22-1-6.)

108. The Developmental Test of Visual Perception (DTVP-3) was given in a non-standardized fashion. Student's composite scores in general visual perception and visual motor integration were average and her score was above average in motor reduced visual perception. Student's Eye-Hand Coordination, copying, figure ground, visual closures, form consistency were average, (JE 2-1-7)

109. Student was administered the Print Tool. Overall her scores were below expectations and the examiner concluded that her handwriting was impaired. (JE 22-1-9.)

110. The recommendations contained in the report were for Student to be provided OT once a week to address concerns in sensory processing/modulation, writing and postural stability, a sensory diet, extracurricular activities, a program to teach self-regulation skills such as *Zones of Regulation*, tools and strategies to support attention at school and regulation, therapeutic listening program, willbarger protocol, use of a picture schedule throughout the day, participation in a social group, a sensory diet, access to water bottle, chewy necklace, straw chewing, use giant sized graph paper in math and space problems, begin a typing program to develop keyboarding skills, (JE 22-1-10.)

111. In preparation for the May 14, 2019 IEP meeting, OT KM reviewed this OT report for the District. She noted a number of problems with the report. KM notes that there was no input from the school, that Student was not wearing her glasses during the evaluation which would have a negative impact on her performance in handwriting. KM also notes that Student never warmed up to the evaluator. KM notes that this evaluation does not provide any information concerning how Student functions in the school environment and that tests were administered in a non-standardized fashion. KM also noted that Student's composite scores were in the average range. KM disagreed with the determination that Student's handwriting was impaired and in school legibility is the standard. (Testimony of KM.)

112. Parents paid \$600 to Erin Anderson, OTR/L & Associates for the November 9, 2018 Occupational Therapy Evaluation. (Testimony of Mother, and P55.)

May 14, 2019 IEP

113. The IEP team met on May 14, 2019 for an eligibility and IEP conference. The team reviewed the outside reports provided by parents including a neuropsychological evaluation by Dr. B in December 2018, an Occupational Therapy Report completed in November 2018, and a speech and language evaluation completed by ML in March 2019. The team also review Student's academic performance update on recent benchmark assessments, progress on IEP goals, general education classroom performance and an update on her social engagement during school hours. (JE 3-1-4 to 6.)

114. Student was reported as doing well in her general education classes. She was utilizing the assistive technology recommendations successfully. There had been a few missed homework assignments, but these were not a determinant to her grade. Student was observed to interact with a small group of friends, used normal voice volume with her friends and was observed to have stronger eye contact skills with the staff she knew. Student had used the nurse's office to eat lunch but was beginning to eat in the cafeteria with her friends. She was using the nurse's office restroom. (Testimony of MC and JE 3-1-6.)

115. Student's recent Fountas & Pinnell Benchmark Assessment test results of May 7, 2019 revealed that she did not advance another level since February 2019 assessment. This was due to poor reading accuracy and lack of elaboration in her answers. It was noted that she had progress two levels from May 2018 to January February 2019. Student's AIMSweb benchmark measures continued to fall well below average in Reading and average to above average in Mathematics. MAP tests were not available. Student's goal benchmark monitoring was reported. She was reading 3<sup>rd</sup> grade level test at 80 words per minute, 2 words per minute below the benchmark target with one month left on the benchmark period. She was reading words containing variant vowels with 90% accuracy, word with low frequency vowel and consonant spellings with 55% accuracy and decodable multisyllabic words with 75% accuracy, meeting 2/3 objectives for the decoding goal. Student was able to retell important events and answer about the text questions with 67% accuracy. Student was choosing writing topics within a minute 90% of the time and writing an average of 3.6 sentences in her written responses. Her spelling was 90% accurate on her most recent writing sample without the use of assistive technology. Student used assistive technology tools daily, specifically Co-Writer, Snap & Read and Kami. She does not use speech to text options. (JE 3-1-4.)

116. The team discussed the outside neuropsychological evaluation, the speech and language and occupational therapy reports and noted discrepancies between their observations of Student

in the school setting concerning social behaviors and communication and the results of the outside speech and language evaluation report. The team noted that Student's responses during the outside speech and language evaluation in areas such as conversation skills, reciprocal turn and perspective taking are dependent on her level of comfort and familiarity with the person/people she is interacting with. The team reviewed domains for further school-based evaluations because the outside evaluations in OT and Speech and Language did not reflect direct school input. Mother provided consent for the evaluations. (JE 3-1-4 to 6, 7 to 11.)

117. The District offered Student one-to-one Wilson reading program 60 – 90 minutes per day, four days per week for eight weeks as ESY (extended school year) services for summer 2019. In response to Mother's concern that Student needed more than Wilson programming the District offered 4 hours of social work services over eight weeks for ESY as well. Mother agreed to consider the District's offer and would inform the IEP team of her decision. (JE 3-1-5 to 6)

118. Mother stated that she was concerned about waiting to implement the recommendations from the outside neurologist and her concern for Student being below in reading and spelling. The level of support offered by the District was challenged as not sufficient. The District responded that Student had been offered Wilson programming at the last two meetings at her home school. (JE 3-1-5)

119. The District offered to reconvene the IEP team before June 10, 2019 or before August 19, 2019, proposing June 10, 2019 and August 15, 2019 as dates for the meeting. Mother agreed to consider this offer. (JE 3-1-6)

District Occupational Therapy Evaluation  
May 21, 2019

120. KM, OT completed a school-based evaluation of Student on May 21, 2019. The evaluation included clinicals, Sensory Processing Measure – School & Home forms, and School Environment Forms, teacher consultation, and a student sensory questionnaire. (JE 16-1-1, and Testimony KM.)

121. Student was observed in a small group setting with her peers during a classroom activity involving poster presentations. Student was observed to be engaged with peers. She was seen smiling, laughing, and touching and intermittently leaning on or into a friend in a playful manner. When her group was presenting to a small group of students, Student declined to speak, but she did contribute when the group presented in front of the whole class later in the observation. She wore dark eyeglasses and presented with rounded shoulder posture. Student's handwriting on near and far point copying was 100% for legibility and spacing with good letter to baseline orientation and letter size. Her general education teacher reported that Student's

handwriting does not negatively impact her grades. Student's speed was below average. (Testimony of KM and JE 16-1-1 to 2.)

122. On Sensory Processing Measure (SPM), a judgment-based questionnaire, was completed by Student's general education classroom teacher and her Spanish teacher. Overall Student scored in the typical range on her Total Sensory Score. The SPM provided information concerning behaviors of difficulty including always looks around or at peers during instruction or announcement and does not perform consistently in daily tasks, quality of work varies widely, rated her as having some problems for touch processing and typical for other aspects measures. School Environment Forms were completed for school bus, physical education, cafeteria (completed by nurse), art and music. Student was rated in the typical range of behaviors for all school environments with social participation and planning & ideas in the some problems range in Spanish class and touch processing in the some problems range in the Main classroom. (JE 16-1-3.)

123. Home forms completed by both parents indicated some problems in areas of Vision, Hearing, Planning & Ideas and on her Total Sensory Score. She scored in the definite dysfunction in areas of Social Participation and Touch Processing. She scored as typical in Body Awareness and Balance & Motion with both Total Sensory Scores in the some problems range. (JE 1-14 to 5.)

124. KM observed that Student appears to have functional core muscles and was observed to make appropriate postural adjustments during functional activities. She was able to follow a multi-step motor sequence with upper and lower body and bilateral integration and sequencing appear to be intact. She may have mild difficulty with motor planning and sensory modulation. She does not appear to have difficulty with body scheme, visual tracking skills and has right/left discrimination on self and others. (JE 1-14 to 5.)

125. Student identified 5 of 7 areas in sensory avoiding, 3 of 18 in sensory seeking, no areas in the rhythm section and two in the behavioral organization area on the Student Sensory Questionnaire. Student identified 1 of 8 areas under tactile discrimination, 2 of 12 areas under auditory discrimination and no areas under body awareness. She indicated that she confused left and right in the visual-spatial discrimination section and that it is hard to visualize when she reads. She reported that she does not fatigue easily or lose balance when climbing stairs, riding a bike, jumping or standing on one foot. Teacher reports Student is independent in all school related self-care. (JE 16-1-7.)

126. In May, KM completed a classroom observation of Student. She was wearing her eyeglasses. Student displayed a rounded shoulder posture. She completed near and far point copying with 100% legibility. KM spoke with Student's general education, JF, teacher about her

handwriting. JF stated that handwriting was legible and did not affect Student's grades. KM recommended that there was no need for OT for handwriting. (Testimony of KM.)

127. Parents wanted OT services for Student for sensory modulation. An OT goal was written to address sensory modulation in school at the request of the parents. (JE 1-1-16, and testimony of KM.)

128. In spring 2019 the District social worker had the BASC – 3 rating scales were completed for Student by her mother, father, Student, general education teacher, special education teacher, Spanish teacher, physical education (P.E.) teacher, and art teacher to update the District's evaluation concerning Student's social/emotional status at school. Mother's responses endorsed clinically significant anxiety scale score. Both parents endorsed clinically significant withdrawal scores and developmental social disorders. Student did not endorse significant problems and none of her scores were elevated. Anxiety was endorsed as elevated by her general education and special education teachers and as clinically significant by her other teachers. Student's profile on the Depression scale was at-risk by her art teacher. Her Spanish teacher endorsed elevation in Attention Problems scales. Her special education and general education teachers endorsed at-risk on Withdrawal scales, while her Spanish teacher endorsed clinically significant scores in this area. Her Spanish and P.E. teacher endorsed below average social skills. Student's P.E. teacher endorsed at-risk Developmental Social Disorders and her Spanish teacher endorsed clinically significant level scores. (Testimony of MC, and JE 15.)

129. From November 2017 to May 2018 Student progressed from level I to J in Fountas and Pinnell Benchmark Assessment. Her reading rate moved from 55 wpm to 56 wpm and her accuracy moved from 97% to 95% on the higher-level text. (JE 40-1-2.)

In November 2018 Student had achieved her reading rate and fluency goal. (JE 32-1-13) Student was reading 2<sup>nd</sup> grade level text with 79 wpm and 99% accuracy, the new baseline for Goals developed in November 2018. Student's decoding single syllable words with long vowels from 60 % to 85/90% accuracy and variant vowels from 60% to 82% accuracy. This goal was achieved. (JE 32-1-14.) Her decoding of low frequency vowel and consonant spellings increased from 27% accuracy to 45% accuracy. (JE 2-1-15.) and her baseline for multisyllable decodable word was 25% accuracy. Progress on social work goal notes that Student is identifying situations that provoke anxiety the goal is still in progress. (JE 8-1-3, 5, 6, and 7, JE 5-1-5 to 7, and JE 32-1-13 to 16.)

130. Student's grades on general education classwork were reported for second trimester through a printout. Student received passing marks on all but one math grade, all spelling grades, all science grades, and all social studies grades. She received F's for two reading log entries and two writing notes home for the period from November 10, 2018 to February 28, 2019. (P47.) Her report card indicates that she received passing grades in all academic classes

and meet or exceeded expectations in her exploratory classes with the exception of trimester 2 Spanish when she did not meet expectations. Student's attendance was good, with only 6.5 days absence for the year. First trimester she needed to improve the consistency of her homework. (JE 31.)

131. Student progressed on her goals and benchmarks. She increased her reading wpm and accuracy in from first-grade text to third-grade text. She increased her decoding skills mastering skills and moving on to higher level decoding skills. Her written language production improved both with and without the use of assistive technology. She increased her classroom participation with practiced responses and progress in other skills to cope with her anxiety. (JE 32 and testimony of JD and MC.)

132. On June 5, 2019 the SW offered a tour of the middle school to Student with one of the middle school social workers to support Student's transition to middle school. (Testimony of MC, and R39-1.) Mother declined the offer on June 10, 2019, stating it was not needed. (Testimony of MC and R 40-1.)

133. District offered Student ESY services for Summer 2019 at the May 14, 2019 IEP meeting. Student was offered Wilson and social work services for ESY (JE 3-1-5)

134. Parents entered a contract with HPDS for fall 2019 Matriculation of Student on May 13, 2019. The contract requires the payment of a \$4,800.00 non-refundable deposit at the time the contract is signed. (JE 42-1-1 to 3).

135. On May 31, 2019 Parents, through their counsel, provided the District with a notice of intent to unilaterally place Student at the HPDS for the summer 2019 term beginning on June 17, 2019 and for the 2019-2020 school year. Parents asserted that the District has failed to meet Student's multiple and complex special education needs. Parents requested that the District assume full financial responsibility for all costs associated with Student's placement at HPDS, including tuition and transportation, effective June 17, 2019. (R38-1, 5 to 6, JE 62-1-1, and testimony of Mother.)

136. The District's denial of Parents' request for tuition and transportation for ESY at HPDS was tendered to Parents' attorney on June 3, 2019. (JE 62-1-1.) Parents declined to meet in June after the evaluations were complete and elected to meet in August 2019. (R38-1.)

137. Parents signed a summer registration form for HPDS summer 2019 program on and placed a \$500 non-refundable deposit on June 7, 2019. (JE 41-1-1 and R57-1.) Parent made a \$1,250.00 tuition payment for the 2019-2020 SY on June 7, 2019. (R57-2.) HPDS summer program from June 17, 2019 to July 26, 2019. (JE 42-1-1.)

## 2019 Summer ESY

138. Student attended HPDS for Summer 2019. HPDS summer program from June 17, 2019 to July 26, 2019. (JE 42-1-1.) HPDS developed an Individual Learning Plan for Student for the Summer 2019 session. The plan was based on the Wilson Assessment for Decoding and Encoding (“WADE”). It indicates that Student had emerging skills in identifying letters and sounds of consonants. It indicates that Student needs continued practice with the identification of short vowel sounds and consonant diagraphs. Finally, Student’s WADE scores indicate that she had achieved supported mastery of decoding and encoding single syllable words (i.e. cat), one syllable short vowel words that end in double consonants, one syllable words with welded sounds (i.e. *-am* and *-an*), and unchanging basewords and the suffix ending *-s*. (JE 43 1-2.) The Basic Reading Inventory (“BRI”) was also given to Student to assess her independent and instructional levels in reading words in isolation, oral reading, and comprehension. Student’s levels ranged from 2-3 for words in isolation, 3-4 for oral reading and 4-5 for comprehension. (JE 43-1-3.) HPDS started Student at Wilson Step 1.3 for Structured Reading to receive instruction on short vowel sounds, practicing segmenting sounds, and building fluency with decodable texts. Her listening comprehension will be strengthened with novel studies at her independent reading comprehension level. (JE 43-1-4.) The goal states that Student is able to recall main events, form connections between characters and clues from the text and make reasonable predictions based on text evidence, her summer goals were to develop these skills and to summarize content of reading material, draw inferences, and recognize literary elements. (JE 43-1-5.) Students was given a math goal that focused on multi-step problems with an introduction to equations with variables, ratios and proportions and percentages. The goals were global enough to apply to these math skills, or any other math skills. (JE 43-1-7.)

139. At the end of the 2018-2019 School year Student was reading 3<sup>rd</sup> grade level as an independent reading level. Student’s scores on the Wilson Assessment for Decoding and Encoding (WADE) were reported in June and August. In June, Student’s Step one skills were reported as emerging in identifying the letters and sounds of consonants and needing continued practice in identifying the letters and sounds of short vowels and defining diagraphs as two consonants put together and make one sound. She was assessed to be at a supported mastery level for decoding and encoding one-syllable words, one syllable words that include a short vowel followed by the double consonants *ss*, *ll*, *ff*, *zz*, and an unchanging baseword and the suffix ending *-s*. In August Student was reported to be at the supported mastery level in identifying the letters and sounds of consonants and needing continued practice in identifying the letters and sounds of short vowels and defining diagraphs as two consonants put together and make one sound. She was reported to have independent mastery of decoding and encoding one-syllable words, one syllable words that include a short vowel followed by the double consonants *ss*, *ll*, *ff*, *zz*, and an unchanging baseword and the suffix ending *-s*. Student was given the Basic Reading Inventory (BRI) in June and was found to have an independent reading level at the end of grade 3 with a comprehension level as

high as grade 5. (Testimony of JS and JE 44-2, 4.) HPDS began Student on Wilson Step 1.3 in June. In August, Student was at the end of Step 1 of the Wilson. Despite JS's report that Student made progress in reading comprehension and Mathematics there was no data measuring Student's reported progress in reading comprehension or mathematics given in the ILP. (Testimony of JS, and JE 44-1-4 to 6.)

140. On August 8, 2019 parent provided the school with a diagnosis of Anxiety by Pediatric Developmental Behavior physician with referral to physician for anxiety. (JE 13-1-1, R 41-1 and Testimony of MC.)

#### August 15 Eligibility Determination

141. Student's IEP team met on August 15, 2019 to consider the District evaluations. (JE 2.) The IEP team consisted of parents and their attorney, the school psychologist as the LEA representative, JF, general education teacher, JD, special education teacher, JB speech-Language Pathologist, MC, School Social Worker, KM, Occupational Therapist, the school nurse, KB, middle school special education teacher, District's attorney, EB, Director of Special Education, a middle school general education teacher and a special education coordinator. (JE 1-1-1, testimony of Mother, JF, JD, CM, KM, JB, EB and KB.)

142. The team reviewed the outside OT report provided by parents and the District's updated OT report, social emotional status and health. A health report was updated and notes that Student is under the care of various specialists at Rush Medical Center with her mother's primary concern being Student's anxiety. (JE 2-1-2.)

143. The team discussed that Student's reading comprehension skills are stronger than her decoding and fluency skills. She has modifications of text being read aloud to her and questions to be read aloud. Current and past interventions provided to Student were reviewed. Her progress on Fountas and Pinnell Benchmark was briefly noted. Student's performance on reading assessments is significantly below her peers and she struggles in written expressions. She requires a high level of support in reading decoding, fluency, comprehension and written expression. Student's 2018 diagnosis of Specific Learning Disorder with impairment in written expression was also noted. Also noted was a 2019 diagnosis of Specific Learning Disability in Written Language and Reading Comprehension. (JE 2-1-4 to 5). Student was determined to be eligible for special education and related services under the IDEA categories of Specific Learning Disability in basic reading skills, reading fluency skills, reading comprehension and written expression. All team members agreed with this determination. (JE 2-1-7.)

144. In addition, the team discussed Student's Eligibility under the IDEA category of Emotional Disability. The team reviewed the most recent results of the BASC-3 completed by

teachers and parents. These results endorse clinically significant concerns for Student in the areas of anxiety, withdrawal and maladjustment. (JE 2-1-18 to 39.) Student seems to view herself as average as reported on the Self Report of Personality. (JE 2-1-36.) The team indicated that Student demonstrated an inability to learn that was not explained by intellect, sensory or health factors, inappropriate types of behavior or feelings under normal circumstances, general pervasive mood of anxiety, unhappiness or depression and a tendency to develop physical symptoms or fears associated with personal or school problems. The team indicated that these characteristics adversely affect the student over an extended period of time and to a marked degree. Parents reported that excessive sweating was diagnosed by Rush, which is being treated with medication. Parent believes this condition is caused by anxiety. Mother also notes that Student jiggles her leg when anxious and that she requires movement when anxious. Parent and representative were in agreement with the decision at the time it was made. (JE 2-1-8, Testimony of MC, JD and EB.)

145. The team reviewed the criteria for a speech-language impairment under IDEA and determined that Student did not meet the criteria due to all scores relevant to impairment were in the average range. Pragmatic language skills were observed as subjectively low, but it was concluded that Student had the skills but may need practice and related service support. (JE 2-1-9 and testimony of JB.)

146. The Student's IEP team determined that Emotional Disability was her primary disability and that Specific Learning Disabilities were secondary. Parents disagreed with this determination at the end of the meeting. (JE 2-1-10 and Testimony of Mother, MC, JD and EB.)

#### August 15, 2019 IEP

147. The IEP team reviewed student's strengths, including help seeking, participation in extra-curricular activities, small group participation and improvement in speaking in large groups. The review her academic progress on Fountas and Pinnell, MAP and AIMSweb assessments. The team reviewed her report card grades. Parent noted that Student has opened up to the social worker and had positive relationships with other staff. Parents indicated that they want Student to transfer to a more targeted milieu. Parents acknowledge that Student made gains, yet they feel that she has a lot of areas of need that need to be targeted and that she needs a more integrated environment to address these needs. Parents provided an update on Student's progress during summer at HPDS. (Testimony of MC, JD, EB, KB, and JE 1-1-27.)

148. Mother is concerned that CMMS is too big for Student. Mother feels that the size of the school, the number of students and teachers, meeting new kids, and the gap in her skills in reading, math and writing would make Student's anxiety worse. Mother feels that Student will not tolerate the noise in the halls, using a locker, having to get books to classes, and to move to a different

class eight times per day, and having to change clothes for P.E. Mother was very concerned about Student's mental health. (Testimony of Mother.) Parents noted that after ESY they felt that HPDS is a more appropriate placement for Student. (JE 1-1-3.)

149. The team noted concerns for Student in the area of anxiety, listing behavioral manifestations, her deficits in decoding, comprehension and written expression. The team indicated Student's need for small group instruction and accommodations and modifications in the regular education classroom and on assessments to allow Student access on her IEP. (JE 1-1-3.)

150. Student's need for assistive technology, including Cowriter, Kami, Bookshare, and Snap & Read were noted, as was her successful use of these items. A calculator will be provided for math. (JE 1-1-3) The team reviewed her present levels of performance on all goals. (JE 1-1-5 to 16.)

151. Draft goals were reviewed and revised after input from parent. Goals were developed for Reading fluency, Phonics, Word Recognition, Writing, two in English/language Arts comprehension, social communication, social emotion, math fluency, and a sensory with input from parents. The reading fluency goal states Student's current reading level, accuracy and reading rate. The goal provides an expected level of achievement at a specific level, reading rate and accuracy level based on the AIMSweb rate of improvement. Student's progress will charted and reported to parents in progress report, goal updates and report cards. (JE 1-1-5.) Phonics goals provide a baseline of current performance and state the specific phonetic phoneme groups that are the subject of the goal. The goal provides measurable mastery criteria and a schedule of review and reporting. (JE 1-1-6.) The sight word goal provides a statement of need based on her summer experience and provides for master of a specific number of new sight words for the year. Baseline data was not available but will be determined at the initial implementation of the goal. (JE 1-1-9 to 10 and testimony of JD.) The reading comprehension goal contains baseline data on comprehension skills, clear objectives designed to increase specific foundational reading comprehension skills and criteria for mastery with reporting provisions. In addition, a second reading comprehension goal addresses a specific skill deficit, story retelling, as recommended by the private Speech-language evaluation. It identified a baseline that included the number of items in the sample and the number of Student's correct responses. It aims for a specific level of mastery with a schedule of prompt fading. (JE 1-1-8 and 1-1-14.) The goal for written expression contains a description of Student's performance in written composition in terms of writing mechanics, spelling, content, organization and production rate which was gather from sources including parent's private evaluations and school data. The goal is broad, but it addresses all the elements of written expression. (JE 1-1- 7.) The two social goals, social emotion skills and social communication, both provide an accurate description of current levels, desired observable behavioral outcomes, means and frequency of monitoring, level of mastery desired and reporting

schedule. Both goals provide for the transference of the skill from the individual therapy setting to small group and classroom settings. (JE 1-1-9 to 10 and 11 to 12.) The math goal reports current performance on a math fluency measure, the goal addresses Student's need to develop fluency or automaticity with multiplication and division facts and provides criteria and a schedule for measuring process and determining mastery. (JE 1-1-13.) The occupational therapy goal addresses a sensory deficit recently discovered through evaluations. It indicates that Student does not demonstrate the desired skill in the school setting, which is the baseline of her performance. The goal's target is 100 % mastery of each benchmark skill during the annual period and it requires progress monitoring through daily interview and interview documents to determine progress and achievement of this goal. Several draft goals were modified at parents request, For example Goal 2, a new decoding was added, goal 3 written expression was revised to include a grammar objective, goal 4 was changed to increase the criteria to 80% mastery, goal 7 was a new goal for math fluency in multiplication and division facts, and goal 9 was a new sight word goal developed during the meeting at the request of Mother. (Testimony of MC, JD, EB, and JE 5-16.) JB prepared a draft goal for the August 15, 201 IEP meeting based on Student's weakness in story retelling on a subtest of the TILLS, a literacy test given during the private speech and language evaluation. In addition, at the meeting a goal was developed to address parent's concerns about generalization of social communication skills that is a combined social work and speech language goal with service delivered in individual and group setting. (Testimony of JB and JE 1-1-27.)

152. The team discussed that Student would receive Wilson Reading program instruction during her instructional reading time. Student was provided with 416 minutes per week of instructional time for reading/language arts instruction. Student would be enrolled in co-taught social studies, science and math, receiving instructional support from a special education teacher in the general education classroom for each 52-minute class period. (FE 1-1-23) Social worker and speech language pathologist to collaborate on social communication goal by working initially in individual sessions and then transferring skill work to small social work group. (Testimony of MC, JB and JE 1-1-9-10, 23, and 27-28.) Social work services were increased to 45 mpw with a social communication group of 30 minutes per week. (Testimony of MC and JE 1-1-23, 27.) Occupational therapy for 30 minutes per week were offered. (Testimony of KM and JE 1-1-23.)

153. Accommodations and modifications and supplemental aids were review and listed for each area of school or class. Accommodations and modifications provide Student with most of the reading supports recommended by Dr. B and ML in all classes. They provide for use of assistive technology, providing examples such as a calculator and text-to -speech or writing support, but not limiting the field of devices, provide for reduced work, breaks, extended time, a sensory diet, class notes, and encouragement. Similarly, accommodations and modifications were provided for classroom, district and state-wide assessments. (JE 1-1-17 to 22.)

154. The team did not agree with Dr. B's recommendation that Student be placed in separate school for students with learning disabilities. The team felt that CMMS could meet Student's academic needs with the proposed increased academic support and related services and that private placement in a therapeutic day school was too restrictive. (JE 1-1-25 and 28.) The IEP provides for 572 minutes per week of special education services in content areas in the general education setting. It provides for Student to receive direct instruction in reading and language arts in the special education setting for 716 minutes per week. It provides for social work, speech-language, occupational therapy and other services in the special education setting for 120 minutes per week. (JE 1-1-23.) It specifically provides for the provision of the Wilson Reading Program. (JE 1-1-27.) In addition, Student would have social/emotional support to address her domain as she transitioned to middle school. The team acknowledged that she was familiar with the many of the other students, from her current school and some of the Monee Elementary students she would know from her community and prior attendance at that school. The team agreed that CMMS could meet Student's needs and provide the instruction, services and support that she needed to be successful in 6<sup>th</sup> grade in both general and special education and it would be in an environment with non-disabled peers. (Testimony of MC, EB and JE 1-1-25.)

**2019/2020 SCHOOL YEAR**  
**Sixth Grade**

155. Student was unilaterally placed at HPDS in fall of the 2019-2020 school year. Student met the admission criteria for HPDS, average or above intelligence and a diagnosis of a learning disability. She started at HPDS June 2019 after completing an application, parent interview and professional references. She completed the half-day Summer program in 2019. Student did well in the Summer program and was accepted for fall admission. (Testimony of JS) Student's fall 2019 ILP did not include the most recent District Eligibility Report completed on August 15, 2019, it also did not include the November 30, 2017 Eligibility Determination, instead it relied upon the Initial Eligibility Determination completed in 2015 (student's first grade year). The records review included the November 28, 2018 IEP but did not include three IEPs developed after the November 2018 IEP. (JE 46-1-1.)

156. Student was started on Wilson Step on upon admission. At the time of the hearing Student was on step 2.4. JS anticipated that Student would complete Wilson step 3 in the second semester. (Testimony of JS.) During 5<sup>th</sup> grade Student's decoding goals were addressing skills that fall on the Wilson Reading System Scope and Sequence of Word Structure at steps 9,12,11, and 6. JD testified that Student had achieved her goals and was well beyond needing Step 1 decoding instruction, which is where HPDS says they started Student in the Summer ILP. (Testimony of DJ, R54, and JE 43.)

157. Student has an ILP or individual learning plan at HPDS. (P43.) Student's ILP for 6<sup>th</sup> grade includes goals in reading comprehension, phonics decoding and encoding, reading fluency and rate, writing goals at the sentence and paragraph level to include mechanics and grammar, Math goals to include multi-step problems, math vocabulary, computational strategies, and ratio, rate, proportion and rational numbers, note taking, organization of planner and materials, highlighting as memory tool, planning long-term assignments. Student's speech and language goals including use of adjectives, verb tense, use of conjunctions, vocabulary, social communication, and phonemic awareness. Her occupational therapy goals are to increase her core musculature, improve breath support for speech, motor planning, and keyboarding. Her social work goals include identifying feels of acute social anxiety and develop coping strategies, practice social conversational skills, and develop lists of her strengths and accomplishments to increase self-confidence and risk taking. Her ILP provides for recorded lectures, assistive technology, spell check, templates, graph paper, copy of lecture notes and testing accommodations such as extended time, stop the clock breaks, reader of text, spelling forgiveness, alternate setting, check-in for understanding of directions, oral testing, scribe, organizational materials and support and environmental adjustments, behavioral regulation supports and instructional strategies. (P46.) Student has access to assistive technology through the HPDS issued Chromebook and access to all software accounts including Read Live. (Testimony of JS.) HPDS did not provide student with any social work services during the summer session. (JE 43 and testimony of MC.)

158. Student receives speech/language therapy for 45 minutes two times per week. Student participates in a social work group once a week to work on social pragmatic language. Occupational therapy is provided to Student as a class component through keyboarding classes three times per week and OT push in during art class. Student is occasionally pulled out for individual OT work. The OT observes Student in PE to monitor concerns with core strength, but they do not limit her physical activities. Student receives a social work curricular competent working on self-awareness, self-advocacy, goal setting, use of support systems, use of emotional strategies and perseverance once per week. Student has 30 minutes per week of direct social work services and is able to get more support as needed. HPDS has a daily schedule that is exactly the same every morning and the afternoons are the same on a weekly basis. (Testimony of JS and P 29.)

159. Student was slow to warm up to HPDS. She likes school. Mother feels that Student is happy at HPDS because it is a small school. She gets up in the morning by herself and talks to her Mother for the 40 minute drive to school each day. Student tells her Mother about her school day during the drive home. Student has made friends and talks about her friends to her Mother. Mother feels that she is well connected to a few girls at HPDS. (Testimony of Mother.)

160. Student is very polite and quiet at HPDS. She is cooperative with teachers. She was viewed to be doing a nice job with Wilson and making nice progress in it. She is reported to demonstrate an improved demeanor, increased her participation significantly and is beginning to initiate conversations with people she trusts. Her attendance is good. (Testimony of JS.)

161. On January 20, 2020 J. █████ Student's teacher emailed JS a narrative summary of Student's progress at HPDS. Student is reported to have increased her reading rate by 25 words per minute, with an independent reading level of 4<sup>th</sup> grade as measure on an assistive technology assessment, her comprehension when material is read to her is reported to be at a 12<sup>th</sup> grade level. Student's writing on the Read Alive program has improved from 35 to 100 words. Student's reading teacher notes an improvement in vocabulary that is beginning to show in her writing. Student is improving in Math as monitored by AIMSweb scores. (P28-1 to 9.)

162. HPDS does not use the current version of AIMSweb. The scores reported on the forms provided were from AIMSweb version 1 and the percentage scores are based on old norms. (Testimony of JS.) In addition, the HPDS AIMSweb scores were not reported in the program's standard format which resulted in omission of critical information needed to interpret the results, such as the grade level tested, the Lexile scores, the version of the test used. (Testimony of JD.)

163. Student has been transported from her home on Monee to HPDS in Lemont, Illinois, a distance of 32 miles each way with \$1.90 toll charge each way. Parents are seeking a reimbursement for 4 trips were day with a daily total transportation cost of \$81.84. Student has been transported 120 days for the period beginning on June 17, 2019 to January 27, 2020. Parents are seeking reimbursement of \$9,820 for transportation expenses form June 17, 2019 to January 27, 2019 and additional expenses at these rates for dates of student attendance from January 28, 2019 the date of this decision. (Testimony of Mother and P56.)

#### CMMS

164. CMMS, the District's middle school, is an International Baccalaureate School that utilizes in inquiry-based framework and cross-curricular model of instruction. Student work is project based with focus on student inquiry and making connections. Class periods are 52 minutes long. All CMMS student have a 27-minute advisory period daily where they participate in Second Step at least twice per week, a social skills program on peer relationships, social/emotional control and goal setting. Special Education Case managers who serve as advisory teachers utilize the same curriculum with the flexibility needed to address modifications needed by students with IEPs. Case Managers also use advisory period to check-in materials, review assignment deadlines, check grades, missing assignments, check test scores and low grades, locker organization, and provide help with assignments. (Testimony of KB.)

165. CMMS has approximately 1000 students. Each grade level is divided into three teams. Teams consist of reading, math, social studies, science, exploratory teacher and Special education teachers who teach the same group of students. Co-taught classes are available in Science and Social Studies. The building is divided by grade level and team classrooms are near one another, so students do not have to traverse the entire building. Teachers in the teams meet formally two to three times per week to discuss students and talk and collaborate regarding team students informally. (Testimony of KB.)

166. CMMS has counselors, a full-time social worker, a student health advocate, a full-time nurse. Counselors complete class scheduling, run social emotional groups on peer relationship, conflict resolution and peer mediation. CMMS uses PBIS to teach and reinforce prosocial skills building wide. Teacher reinforce positive student behaviors with stamps that are collected and used at the Comet Store on Tuesdays. (Testimony of KB.)

167. CMMS has after school activities for all students including athletics, chess scholastic bowl, coding, STEM, and IMSA. There is after-school support in reading and math for eight week blocks two days per week from 2:45 to 4:10 p.m. is available to all students. Teacher support is provided by one general education and one special education teacher. (Testimony of KB.)

168. CMMS students take an exploratory class, such as design technology, connections, music, art, communication arts. All students take one trimester of Integrated Studies/Connections a course teaching students budget making, and goal setting and involve them in community projects. Once student schedules are established, they remain the same throughout the trimester. Student schedules are found on their ID, in their planners, and are available online. Each student has a Chromebook with text-to-speech and word processing software and Learning Ally. Students with AT accommodations in their IEPs have the additional applications added to their individual Chromebooks. CMMS has full and part-time technology support on staff for technology support for teachers and students. (Testimony of KB.)

169. Parents are given access to Skyward and Google classroom to allow them to monitor their students' grades and assignment completion. (Testimony of KB.)  
CMMS provides all incoming students with orientation the summer before 6<sup>th</sup> grade to give them a tour of the building, practice opening lockers, provide an overview of the program and meet some of the teachers. (Testimony of KB.)

170. CMMS is able to provide the instruction and services offered in Student's August 15, 2020 IEP. It has Wilson trained teachers, it uses multi-sensory, research-based programs and strategies in Reading, Written Expression and Math. CMMS programs such as Achieve 300,

Systems 44, and Read 180. The instruction, services, supports and accommodations and modifications required in the August 15, 2019 developed for Student are all available to Student at CMMS. (Testimony of KB and JE 1.)

171. [REDACTED] is a school psychologist. (Testimony of JD, and JE 52-1-2 t&3, JE 10-1-1 & 2) Ms. [REDACTED] signed in as the LEA representative at the eligibility meetings. (JE 8-1-1, JE 9-1-6, JE 4-1-2, JE 3-1-2, and JE 2-1-7.) Ms. [REDACTED] also participated in IEP meetings during the relevant period. (JE 11-1-1, JE 5-1-2, JE 4-1-2, and JE 1-1-1.)

[REDACTED]

172. HPFD is a private special education day school for students with learning disabilities ages 6-15 years of age with curriculum through eighth grade. HPDS goals are to provide students with learning disabilities with remediation and strategies to improve scores to grade level and transition students to the next school. (Testimony of JS and R53.)

173. HPDS has a low student-to-teacher ratio, Lemont campus has a total of 19 students with one 6<sup>th</sup> grade plus classroom with 10 students and two teachers. Some of the teachers are general education teachers and others are LBS1 certified teachers. General education teachers coteach with LBS1 teachers. (Testimony of JS.)

174. HPDS has occupational therapy for 10 hours per week, speech language pathologist for 24 hours per week over three days, and social worker a full-time as well as special class teachers. Each therapist provides curricular components to all HPDS students and sees some students individually and in small groups. Related services are provided through an integrated approach wherein the specialists meet with students and collaborate with teachers throughout the school day. HPDS has a half-time Assistive Technology specialist on staff who has a MA in assistive technology from National Louis University. HPDS does not have a nurse on staff. (Testimony of JS and R53-23.)

175. HPDS utilizes Wilson language training, a scientifically based method, based on Orton Gillingham instructional method, that is multi-sensory, using auditory, visual and kinesthetic instructional activities to help students with dyslexia learn reading in a structured and sequential manner. HPDS Lemont has been certified as a Wilson school because it has a Wilson instructional coach and 90% of the teachers are Wilson certified. Wilson methods are integrated throughout the day with teachers prompting students to use Wilson skills/rules to decode during other subjects. HPDS provides executive functioning training, explicit and systematic Math instruction, explicit instruction in self-awareness, perseverance, proactivity, and self-advocacy and explicit instruction in utilizing assistive technology. (Testimony of JS, and R53.)

176. HPDS teachers (from both campuses) survey reports found that 16 of 20 teacher respondents reported using Wilson Reading Program in some manner to inform their instruction of students. One of 20 teachers reported strictly follows the protocol, six of 20 teachers reported that they do not strictly follow the given protocols. (R53-11.)

177. HPDS uses DIBLES (Dynamic Indicators of Basic Early Literacy Skills) to monitor reading fluency. Seventeen of 20 HPDS teachers use Read Naturally *Read Live* to teach reading fluency. Reading comprehension and listening comprehension strategies are taught to students primarily through teacher-created reading guides and materials, using novel studies and book club discussions, with text read aloud by teachers and or text-to-speech assistive technology using programs such as *Bookshare*. Teachers also use *Read Live*, *SPIRE*, *Making Connections*, and SRA series to teach specific reading comprehension skills. Speech pathologists teach *Visualizing and Verbalizing* to use structure words to aid comprehension and expressive language. (Testimony of JS, and R53.)

178. Writing is taught using *Step Up to Writing*. As students develop foundational skills HPDS uses technology such as Microsoft Word, Ginger, Google Docs and students with greater needs are taught to use *Co-Writer*, *Dragon Naturally Speaking*, *Learning Ally*, and/or *Kurzweil 3000* to assist students in organizing their thoughts and getting them down on paper. (Testimony of JS, and R53-12 to 14.) Mathematics is taught using the *JUMP Math Program* with its students. HPDS uses the Group Mathematics Assessment and Diagnostic Evaluation (GMADE) as its primary formal math assessment in fall and spring. HPDA also administers the MAP test in fall and spring to allow parents to compare their student to the performance of typically performing peers. (R53-14 and Testimony of JS.)

179. JS testified that students are “constantly assessed through the year.” (Testimony of JS.) HPDS’s ISBE application states that it formally assesses students’ skills in decoding and encoding three times per year, fall, in December, and spring. (R53-11.) Executive Functioning Intervention is built into the school day for all students at HPDS. All students participate in two executive function periods on at the beginning and the at the end of the day to review daily expectations, turn in or receive help with homework, and to review daily homework expectations and gather needed tools and materials for homework completion. Teachers have developed a list of a possible materials needed and students review this with support daily. (Testimony of JS.)

180. Emotional support is provided through review of student behavioral expectations, staff planning and understanding student needs through weekly faculty and integrated staff meetings. Behavioral concerns are discussed with social worker and principal and students are provided with appropriate supports to address ADHD or anxiety that is causing behavioral concerns. In addition, the occupational therapist provides classroom support of students in handwriting,

keyboarding and emotion regulation instruction through use of *Zones of Regulation* program. If needed, students are provided sensory diets. (Testimony of JS.)

181. HPDS has a weekly cooking activity available to students as an extra-curricular activity. Student does not participate in this activity. (Testimony of JS.)  
Student's has had perfect attendance at HPDS (Testimony of JS and JE 48-1.)

182. Generally, HPDS does not accept students who have emotional disturbances. (Testimony of JS.)

### **ANALYSIS AND CONCLUSIONS OF LAW**

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

**Issue One: Whether or not the District violated its "child find" obligations under the IDEA by failing to identify and evaluate Student in all areas of suspected disability for special education and/or related services during the 2017-2018 and 2018-2019 school years?**

The IDEA "Child Find" mandate requires school districts to develop and implement policies to identify, locate, and evaluate children who need special education and related services.<sup>14</sup> IDEA further provides that when a district has reason to suspect that a child has a disability, the district must conduct a full and individual initial evaluation that ensures the child is assessed for all areas of suspected disability using a variety of reliable and technically sound instruments.<sup>15</sup> The standard establishing whether a district has failed to identify a student with a disability under Child Find is that the district has overlooked clear signs of disability and was negligent in failing to test or that there was no rational justification for not deciding to evaluate.<sup>16</sup>

Here, Parents argue that the District failed to 1) conduct its own psychological evaluation of Student and failed to have a school psychologist involved in the eligibility or IEP meetings for Student after April 2017, 2) failed to complete any emotional functioning testing beyond BASC rating scales, 3) evaluate Student in reading by failing to conduct additional evaluations after the completion of the WIAT-III in October 2017, 4) despite many indications over the previous years that Student struggled with handwriting and sensory modulation, it failed to conduct an OT evaluation until 5/21/2019, 5) failed to conduct any speech language evaluations, 6) failed to evaluate Student's written skills as recommended by Dr. B, 7) despite Dr. B's recommendation for assistive technology (AT) for Student it failed to conduct an AT a evaluation until February 2019. Parent argues that these failures resulted in the failure of the

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<sup>14</sup> 20 U.S.C. §1412(a)(3)(A),

<sup>15</sup> 34 C.F. R. §300.111 and 34 C.F.R. 300.15

<sup>16</sup> *Demarcus L. v. Board of Education of the City of Chicago, Dist. 299*, 63 IDELR 13, quoting *Board of Educ. of Fayette County, Ky v. L.M.*, 478 F.3d 307, 313 (6<sup>th</sup> Cir. 2007).

District to conduct appropriate evaluations, the evaluations conducted were inadequate and resulted in a denial of FAPE. The District argues that its evaluations were appropriate.

Here, the District conducted evaluations and made eligibility determinations on November 30, 2017 and August 15, 2019. (FF 29-38, 113- 116, and 141 – 146.) The regulations specifically state that this includes information provided by the parent.<sup>17</sup> Here, Parent requested an evaluation on September 15, 2017. The same day, the District responded affirmatively and asked Parent to consent to the District’s proposed reevaluation plan for Student. (FF 24-25.) Parent did not provide consent until after her private evaluation was completed and requested that the District did to duplicate any of the testing completed by her private evaluator. (FF 27 - 28.) District used the neuropsychological evaluation that was provided by Parent. (FF 32.) Said neuropsychological evaluation was comprehensive, it used more than one tool in each domain and addressed all concerns known to Mother and teacher. (FF 29.) Similarly, in August 2019, District relied upon the private neuropsychological evaluation which included a review of previous neuropsychological evaluations and provided new assessments academic achievement. (FF 74.) In addition, documentary evidence demonstrates that the school psychologist was present at all of Student’s IEP and Eligibility meetings during the relevant period. She signed in on the conference sign in sheets as the LEA representative. (FF 171.)

While the District did not conduct its own psychological evaluation, it adopted the private neuropsychological evaluation provided by Parents. Parents did not provide authority in support of the proposition that the District’s conduct was an IDEA violation or denied Student a FAPE. The preponderance of the evidence does not support the conclusion Parents desire.

Parent asserts that the District failed to complete any emotional functioning testing beyond BASC rating scales. As discussed above, the District relied upon the 2017 neuropsychological evaluation which contained social/emotional inventories and reading scales in addition to the BASC-3 scored and reported by the District social worker. (FF 29 and 36.) In 2019 the District again relied upon a review of the private neuropsychological evaluation report, parent and teacher reports the BASC-3 and a rating scale completed by Student during the eligibility determination. (FF144.) The District did not rely on a single measure of assessment in the social emotional area as the sole criteria.<sup>18</sup> Accordingly, the preponderance of the evidence does not support Parent’s claim.

Parent asserts that the District did not evaluate Student in reading by failing to conduct additional evaluations after the completion of the WIAT-III in October 2017. While this is technically true, it did rely upon the reading assessments that were included in the 2018 private

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<sup>17</sup> 34 C.F.R. §300.304(b)(1).

<sup>18</sup> 34 C.F.R. §300.304(b)(2).

neuropsychological evaluation report and other information including classroom performance, performance on District tests, such as AIMSweb and Fountas and Pinnell Benchmark Assessment. (FF 66,115, and 147.) As above, Parents did not provide authority in support of the proposition that the District's conduct was an IDEA violation or denied Student a FAPE. The preponderance of the evidence does not support the conclusion Parent desires.

Parents assert that despite many indications over the previous years that Student struggled with handwriting and sensory modulation, it failed to conduct an OT evaluation until 5/21/2019. Evidence presented at the hearing does not support the conclusion that there were many indications that the Student struggled with handwriting. Evidence presented demonstrates that as far back as 2015 Student's handwriting was legible and not a concern. (FF 9, 25, 54,121, and 126.) The District conducted an OT evaluation after handwriting was raised as a concern by the outside OT evaluation that was provided to the District in May 2, 2019. (FF 109 and 116.) The preponderance of the evidence does not indicate that there were clear signs of a handwriting deficits in support the Parent's claim.

Evidence presented demonstrates that Parent first informed school staff that Student had sensory issues such as noise during Student's fourth grade year. (FF 50.) District teachers did not notice any signs of sensitivity to sensory input and Student did not complain to teachers. (FF 50.) Further, Student voluntarily participated in band and selected percussion as her instrument. (FF 55.) Student ate lunch in the nurse's office, however original reason given for this accommodation was Student's anxiety associated with eating in front of others. (FF 51.) These are not clear signs of disability and the districts failure to evaluate was not negligent. Then, the District was given the outside OT evaluation in May of 2019 which indicated some sensory concerns. (FF 73, 106, 107, and 108.) The District conducted an OT evaluation after receipt of the outside OT evaluation and offered Student accommodations and OT service to address her identified sensory needs. (FF 127, 151, and 152.)

Parent claims that the District failed to conduct any speech-language evaluations. The record does not contain evidence that any speech-language evaluations were requested. The District's IEP teams completed two needs assessment during the relevant period. (FF 25, and 89.) The District also reviewed and considered the outside speech and language evaluation provided by parent which was based on numerous assessments. (FF 89, 94.) The District does not agree that there is a need to complete speech and language testing. (FF 116.) All of Student's language scores were in the average range on standardized tests on the outside speech and language evaluation. (FF 89-91.) In addition, while it disagreed with many of the conclusions of the outside speech and language evaluation report, it offered the Student speech language services to address a social communication goal in the August 15, 2019 IEP. (FF 152.) The preponderance of the evidence does not support the Parent's claim.

Parent claims that that District failed to evaluate Student's written skills as recommended by Dr. B. in September 2017. Dr. B, the private neuropsychologist, recommended that Student's writing skills be evaluated. (FF #40.) On October 31, 2017, Student was given the WIAT-III writing subtests. Student's performance on Sentence Combining was in the average range. Student was found to be in the below average range on Sentence Building. (FF 35.) Student was evaluated by the District in writing. The preponderance of the evidence does not support the Parent's claim.

Parent claims that despite Dr. B's recommendation for assistive technology (AT) for Student it failed to conduct an AT evaluation until February 2019. In the September 30, 2017 neuropsychological evaluation report, Dr. B suggested that Student may benefit from assistive technology and encouraged parents to request an assistive technology assessment. (FF 40.) The IEP team considered Dr. B's report. (FF 29.) They adopted some but not all of his recommendations for Student in 2017. The District determined that placing Student in a classroom with literacy support from a special education teacher and teaching aid would address her needs. There is nothing in the IDEA that requires the District to implement the independent evaluation's recommendations.<sup>19</sup>

**Issue Two: Whether or not the Student was denied a FAPE by the District's purported failure to provide Student with an appropriate IEP during the 2017-2018 and 2018-2019 school years?**

Parents argue that the District denied Student a free appropriate public education (FAPE) by failing to provide her with an appropriate IEP during the 2017-2018 and 2018-2019 school years. Parent argues that the IEPs lacked goals with measurable baselines and unable to monitor progress, that no OT or Speech-language goals were offered, that reading services were not offered with sufficient intensity or structure and that reading instruction was not multi-sensory or research-based to remediate learning disabilities in reading and that it failed to offer necessary accommodations or with sufficient specificity. Parent argues that supplemental aids and services were minimal. In addition, Parents argue that modification of assignments had the effect of boosting Student's her grades and making them an unreliable indicator of progress or improvement.

District argues that it provided Student with a FAPE. It argues that Students goals were appropriately ambitious, based on national norms of the expected rate of progress. Student made progress on her goals, although not as much as her parents hoped for, but she made slow but meaningful progress. District argues that Student's reading support was appropriate and allowed her to make progress. She received both pull out and push in special education services for reading

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<sup>19</sup> *James D. v. Bd. of Education of Aptakasic-Tripp CCSD 102*, 52 IDELR 281 (N.D. Ill. 2009.)

and writing and had a teaching assistant in the classroom to assist with reading and writing and other activities in other subject areas that involved reading, such as math story problems.

The District argues that declining scores on standardized tests in not indicative of lack of growth. Dropping standardized scores mean only that the child is progressing at a slower rate than her peers. Both Dr. B and JD, a reading specialist, agree that Student's reading disorders are very pronounced. The District asserts that under IDEA we look at a student's gains based on that student's unique characteristics – here anxiety and numerous pronounced learning disabilities. District asserts evidence was presented that demonstrates that Student made progress in all her goal areas and in the general education curriculum. Goals were challenging and the levels were increased at each of Student's IEP meetings.

The IEP is a comprehensive statement of the educational needs of a student and the specifically designed instruction and related services a district will employ to meet those needs.<sup>20</sup> An IEP must offer instruction specially designed to meet a child's unique needs, it is to be constructed after careful consideration of the child's present levels of achievement, disability needs, and potential for growth.<sup>21</sup> District's goals in the 2017-2018 school year contained baseline levels of Student's current performance, set criteria for mastery of benchmarks, and the means and schedule progress would be measured. They were reviewed and adjusted, with increasing expectations or advancing skills at each subsequent IEP meeting. The goals were designed to allow Student to progress by acquiring and mastering new foundational skills, with regular increasing mastery criteria. (FF 18, 22, 23, 43, 46, 60,67, 129, and 131.)

Student's IEP provided accommodations and modifications and supplementary aids and services sufficient to allow her to make progress in the general education curriculum. Supports included special education literacy/reading support in the general education classroom and a teaching aid in other content courses to assist with reading support, dictation of responses, small group work to implement accommodations, to provide Student's additional time needs, and to record student responses on assignments and tests. These supports provided Student with the support she needed to address her pronounced disabilities in reading and writing. (FF 17, 18, 44, 52, 60, and 67.)

As discussed in Issue one, evidence presented at the hearing does not support the conclusion that there were many indications that the Student struggled with handwriting. Evidence presented demonstrates that as far back as 2015 Student's handwriting was legible and not a concern. (FF 9, 25, 54,121, and 126.) The District conducted an OT evaluation after handwriting was raised as a concern by the outside OT evaluation that was provided to the District in May 2, 2019. Student's handwriting was found to be legible and that she did not need OT for handwriting. (FF 109 and 116.) Evidence presented did not support that there were clear signs of sensory disability and the districts failure to evaluate was not negligent. Then,

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<sup>20</sup> *Burlington School Comm. V. Massachusetts Dep't of Educ.*, 556 IDELR 389 (U.S. 1985).

<sup>21</sup> *Andrew F v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017)

after the District was given the outside OT evaluation in May of 2019 which indicated some sensory concerns. (FF 73, 106, 107, and 108.) The District conducted an OT evaluation after receipt of the outside OT evaluation and offered Student accommodations and OT service to address her identified sensory needs. (FF 127, 151, and 152.)

Also discussed in Issue One, the record does not contain evidence that any speech-language evaluations were requested. The District's IEP teams completed two needs assessment during the relevant period. (FF 25, and 89.) The District also reviewed and considered the outside speech and language evaluation provided by parent which was based on numerous assessments. (FF 89, 94.) The District does not agree that there is a need to complete speech and language testing. (FF 116.) All of Student's language scores were in the average range on standardized tests on the outside speech and language evaluation. (FF 89-91.) Accordingly, the need for speech-language services was not established.

The District provided Student with reading instruction and interventions that included direct instruction in decoding, fluency and comprehension base on reading research and literacy support in the general classroom through special education teaching, accommodations and modifications in general education language arts class and support teacher aid support with reading and writing in other content areas. (FF 18, 60, and 67) The services provided allow Student to progress in achieving her goals and in the general education curriculum. (37, 48, 51, 66, 15, 129, and 131.) In addition, the District continuously offered Student more intensive reading instruction and intervention through the Wilson reading program beginning November 28, 2018, but Parent declined the offer. (FF 61,72, 117, 133, and 152.)

Parent argues that the District provided minimal social work support. There was no evidence presented at hearing that student was unable to participate in her educational program due to the need for additional social work services. The District adjusted Student's social work service minutes in response to Mother's request and concern. (FF 56.) Student had sufficient social emotional support to allow her to seek help, participate in small groups and play with friends. She was given an accommodation to eat lunch in the nurse's office due to her anxiety. Before the end of the school year, Student was able to utilize her strategies and coping skills to return to the cafeteria for lunch with her friends and classmates. (FF 51 and 114.) The preponderance of the evidence does not support the conclusion that Student was provided minimal or insufficient social work support.

Parent argued that Student was not given several "necessary" accommodations. The District provided Student with most of the accommodations and supplementary supports that Dr. B. recommended. (FF 34, 39, 40, 41, 42, 80, 81, 82, 83, 84, 35, 44, 45, and 64.) None of recommendations were characterized as necessary to support Student's educational needs and

there was no evidence that the supports the District or the means through which they provided them was insufficient to address Student's needs.

Parent argues that Student's IEP were not appropriately ambitious because it did not contain challenging goals. District responds that Students goals were appropriate ambitious because they were based on national norms of the expected rates of progress. (FF 37, 43, and 60.) The Parent argued that Student's stagnation on standardized achievement test administered by Dr. B demonstrate that Student's goals were not appropriately ambitious. (FF 79.) Dr. B expressed concern because Student was not bridging the gap between her reading skills and the reading skills of her peers. Dr. B did not assert that Student was not learning to read, but that she was not learning to as fast as her peers were learning. Dr. B notes that Student is learning. (FF 79.) Because standardized test scores are designed to compare a student to his/her same age peers standardized test scores do not necessarily show a lack of progress.<sup>22</sup> A disabled student's progress should not be measured by his relation to the rest of his class, but rather with respect to the individual student.<sup>23</sup> Here, standardized test scores demonstrate that Student is learning at the same rate as her peers, not declining, but also not increasing her learning trajectory.

Student is has demonstrated slow, but meaningful progress. She has improved her decoding skills and has moved from decoding simple CVC works to working with words containing variant vowels. The rate and accuracy speed of Student's reading has increased as has the complexity of the text beginning at a first grade level and moving to the third grade level. This progress is supported by benchmark measurements and testing such as Fountas and Pinnell, MAP and AIMSweb test. (FF 19, 37, 66, 115, and 131.) These are clear indications of individual student learning. Similarly, Student has progressed in social emotional areas from a rarely participating in class, to participating in small groups, presenting in front of a kindergarten class and participating in extra-curricular activities. (FF 19, 23, and 55.) The hearing officer notes that Student was offered one of the reading programs recommended by Dr. B continuously since November 28, 2018 but Parent declined those services. Now, Parent is arguing that the District is somehow responsible for a lack of progress that may have resulted from their decision.

**Issue Three: Whether or not the District erroneously found Student eligible for special education and/or related services under an Emotional Disability classification on or about August 15, 2019?**

Parents argue that the District erroneously found Student eligible for special education under the category of emotional disability ("ED") on August 15, 2019. Parent argued at hearing that the primary source of Student's struggles in school are her specific learning disorders in reading and writing, not her anxiety. Specific learning disabilities are a neurological disorder, not

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<sup>22</sup> *James D. v. Bd. of Education of Aptakisic-Tripp CCSD 102*, 52 IDELR 281 (N.D. Ill. 2009.)

<sup>23</sup> *Id.*

caused by anxiety. They assert that Student's specific learning disorders caused anxiety. She was aware in school that her ability to learn and understand concepts was significantly lower than her peers. They assert that she was reserved and did not participate in class because she was self-conscious and worried about appearing different or less competent than her peers. Yet, Student does not have anxiety about attending school. She is eager to attend and do well.

Parents argue that Student's learning and emotional issues have been exacerbated by the District's failure to provide her with needed special education, services and support over the past several years. They argue that the only classes where serious problems were reported on the BASC were Spanish, Art, and P.E., classes with less structure and where she did not have supports such as a teaching assistant. They argue that the only assessments of emotional functioning were BASC, which is not specifically designed to track ED criteria.

Parents argue Student didn't need the ED label. She needed appropriate services, which the district is required to provide regardless of eligibility label.

Parents argue that Student's emotional progress since starting at HPDS supports the conclusion that the District's failure to provide appropriate services led to increase in anxiety. Appropriate remediation of learning disabilities at HPDS has a significant positive impact on her emotional functioning. HPDS does not admit student with primary eligibility of ED. If Student has an IEP with primary ED eligibility, the Illinois State Board of Education will not allow the District to place her there.

Parents disagreed with the eligibility change to ED primary at the 8/15/2019 meeting. The District stated that it didn't matter whether ED or SLD was primary. Parents disagreed, and requested, that SLD remain primary disability and ED be included as secondary, if the District wasn't willing to remove ED all together.

District asserts that Parents want it both ways. They claim that the District did not recognize Student's anxiety in the school setting. Yet, when the ultimate step of recognizing that anxiety was taken – by making Student eligible for special education under the ED category, the Parent then claims the decision is in error.

Here on August 15, 2019 the IEP team reviewed the IDEA criteria for eligibility under the ED category and determined that Student has a condition exhibiting the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: an inability to learn that was not explained by intellect, sensory or health factors, inappropriate types of behavior or feelings under normal circumstances, general pervasive mood of anxiety, unhappiness or depression and a tendency to develop physical symptoms or fears

associated with personal or school problems. The team indicated that these characteristics adversely affect the student over an extended period of time and to a marked degree. (FF 144.)

As early as 2015 Student has been diagnosed with Social Anxiety Disorder by Dr. B. (FF 11, 13, 17, 36, and 78.) Dr. B recommended that Parents take Student to a psychiatrist if the anxiety continues to get worse. (FF 41.) Student was diagnosed with a medical diagnosis of anxiety in August 2019. (FF 140.) Student is aware of the differences between herself and her peers in learning, has anxiety in social and performance situations. (FF #5, 51, and 53.)

Mother has expressed concern about Student's anxiety and her need to develop coping skills as early as 2015 and as recently as August 15, 2019. (FF 5, 31, 56, and 117.) Mother declined Wilson Reading Program because her concern for change and the effect on Student's anxiety. (FF 61, 72, and 117.) Mother is concerned that CMMS is too big for Student and is concerned about her mental health if Student attends CMMS. (FF 148.) Here, the preponderance of evidence presented at hearing supports the District's August 15, 2019 conclusion that anxiety is a condition that has been exhibited for a long period of time.

Neither party disputes that Student has demonstrated an inability to learn that is not explained by intellect, sensory or health factors.

Evidence at hearing does not support the conclusion that Student's anxiety has not been pervasive at school. For example, Student has been well behaved and has friends. FF 10, 51, 114.) Further, teachers report did not spontaneously report that Student demonstrated signs of anxiety in the classroom, even though their BASC -3 rating scales revealed characteristics of anxiety. (FF 36, and 128.)

The IDEA eligibility criteria only require that one of the characteristics be exhibited for a long period and to a marked degree. Accordingly, the presence of feelings of anxiety supported by the indicators above does satisfy IDEA standard. The preponderance of evidence supports the District's eligibility determination. Whether it is the primary disabling condition is another question.

Parent infers that the District made it the primary eligibility category to prevent the District from being able to place Student at HPDS due to Illinois State Board of Education rules. However, Mother has declined the very services she has claimed that the District failed to offer to Student due to Student's anxiety. It appears that Student's anxiety was so severe that it prevented Parents from accepting the District's offer of the reading services that their experts, Dr. B and ML recommended on at least four occasions. (FF 61,72,117,133, and 152.) Here, I do not find the

District's decision unreasonable under the circumstances described herein.<sup>24</sup> Accordingly, I do not find the District's eligibility determination for Student of primary ED as erroneous.

**Issue Four: Whether or not the Student was denied a FAPE by the District's purported failure to adequately consider independent educational evaluations ("IEE") submitted by Student's Parents?**

Under the IDEA and its implementing regulations, if parents obtain an IEE and that IEE is shared with the district, the district must consider the results of the evaluation when making decisions involving the provision of FAPE to the child.<sup>25</sup>

Here, Parents obtained independent educational evaluations in neuropsychology evaluation in September 2017 and 2018, an occupational therapy evaluation in 2019 and a speech and language evaluation completed in 2019. (FF 27, 29, 74, 86, and 101.) Parents provided the District with the 2017 neuropsychological evaluation report on an unknown date and it provided the 2018 neuropsychological evaluation, the 2019 occupational therapy evaluation, and speech and language evaluation reports on May 2, 2019 (FF 73.) The IEP team adopted the 2017 neuropsychological evaluation report on November 30, 2017. It declined to complete its own testing. The team considered the 2017 neuropsychological evaluation report recommendations, and many were adopted by the team and included in the IEP. (FF 29, 20, 32, 38, 39 – 46.) The Later, the team offered more of the recommendations in November 28, 2018. (FF 61, 72, and 117.) On May 14, 2019, the IEP team met and considered the 2018 neuropsychological evaluation, the 2019 occupational therapy evaluation, and speech and language evaluation reports. (FF 113.) Again, it adopted the neuropsychological evaluation report, declining to complete its own additional testing. It adopted most of the neuropsychological evaluation report recommendations for the provision of services. It considered the 2019 occupational therapy evaluation report, and speech and language evaluation report requested consent to perform its own evaluations. (FF 116.) After the completion of the District's evaluations, the IEP team met again. On August 15, 2019, the team considered the outside speech and language evaluation report and the occupational therapy report and adopted some of the recommendation contained in the reports. (FF 141 – 145, 150-153.)

The District did not reply upon evaluator conclusions and/or recommendations when those conclusions or recommendations were in conflict with their understanding of Student's functioning and the conclusions of the evaluator(s) were not based on observations of the Student in her school environment or with input from the school concerning her functioning or academic or social emotional performance at school and were not informed by what instructional material and

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<sup>24</sup> *Kerry M. v Bd. of Education of Manhattan School District*, 114,46 IDELR 194 (N.D. Ill. 2006), "the IHO must defer to the decisions of the school administrators unless the decisions are unreasonable."

<sup>25</sup> 34 C.F.R. §300.502(c).

methods were being used with Student by the District. But that is not what is required<sup>26</sup>. The preponderance of the evidence presented demonstrates that the District considered each Independent Educational Evaluation Parents provided to them.

**Issue Five: Whether or not the District offered Student a FAPE for the summer 2019 ESY, and 2019-2020 school year? If not, whether Student’s unilateral placement at [REDACTED] is appropriate given Student’s educational needs, the least restrictive environment mandate, and equitable consideration?**

Here, Parents have raised a unilateral placement claim. They must prove that the District’s proposed placement denies student a FAPE and that the Parent’s proposed program is appropriate.<sup>27</sup>

Here, Parent argues that the District did not formally offer a FAPE to Student for summer 2019 ESY. Parent asserts that the summer offer was never included in an IEP, which as result makes it a denial of FAPE. District asserts that it offered Student a FAPE for summer 2019 ESY. District responds that it offered Wilson reading 1:1 for summer 2019 with social work services.

Contrary to the assertion of parent, the District’s May 14, 2019 IEP contains a written offer of Wilson reading program 60 – 90 minutes per day, four days per week for eight weeks as ESY. (FF 117.) The District’s offer satisfies Dr. B’s recommendation for intensive reading utilizing one of the specific programs that he recommended. (FF 80.) In response to Mother’s concern that Student needed more that Wilson programming the District offered 4 hours of social work services over eight weeks, an amount that equals 30 minutes per week for ESY as well. The level and intensity of the offered services appears to be sufficient to address Student’s needs. In the absence of evidence to the contrary, the presumption is in favor of the district’s plan.<sup>28</sup> The District’s proposed summer 2019 ESY would have provided educational benefit to her in the areas of reading, particularly foundational skills and in the social emotional domain, and the reading and social work goals in place for the coming were appropriately ambitious as they were designed based on Student’s individual needs, her present levels of achievement, and potential for growth based on her past rate of achievement.<sup>29</sup> The goals were designed to allow Student to progress by acquiring and mastering new foundational skills in reading and social emotional skills and strategies. The preponderance of the evidence establishes that the District’s summer 2019 ESY offer was an offer of a FAPE to Student. Accordingly, the District because the District offered Student a FAPE, even

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<sup>26</sup> *James D. v. Bd. of Education of Aptakisic-Tripp CCSD 102*, 52 IDELR 281 (N.D. Ill. 2009), *Kerry M. v Bd. of Education of Manhattan School District*, 114,46 IDELR 194(N.D. Ill. 2006), *T.S. v Board of Education of Town of Ridgefield*, 20 IDELR 889 (2d Cir. 1993), and *G.D. v Westmoreland School District*, 17 IDELR 751 (1<sup>st</sup> Cir. 1991).

<sup>27</sup> *Florence County Sch. Dist. Four v. Carter*, 103 LRP 44107( U.S. 1993.)

<sup>28</sup> *T.G. v Midland School District 7*, 55 IDELR 129 (C.D. Ill. 2020).

<sup>29</sup> *Andrew F v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017)

if the program preferred by the parents is appropriate, they are not entitled to reimbursement from the District.<sup>30</sup>

Parents argue that the District's 2019-2020 IEP offered to Student is not reasonably calculated to enable her to make progress appropriate in light of her circumstances. Parents argue that many of the goals are deficient, lacking baseline data, mastery criteria and the ability to measure progress. Parents argue that the reading goals are attacked as deficient because they do not address specific skill deficits, i.e. the automatic reading of diagraphs, consonants, blends and welded sounds, and that writing goals do not specify how Student will improve her grammar in relation to her present level of performance. Parents argue that the social/emotional goal does not provide for skills building in authentic environments for generalization of skills outside of social work sessions and OT skills do not address handwriting. Finally, Parents argue the goals were not finalized due to Parent's request to review the goals. Next, Parents argue that the services offered are insufficient in the area of speech-language, social work, and reading to address Student's needs or to provide reinforcement throughout the school day. Parents assert that unnamed but necessary accommodations were not provided and the specific AT is not indicated. Finally, Parents argue that the District failed to consider any of the harmful effects of placement of Student at CMMS.

The District argues that it offered Student a FAPE at CMMS. It argues that CMMS can satisfy both Student's social emotional and academic needs though the staffing at CMMS, the design of the middle school program that includes a social skills curricula, including *Second Step* and *PBIS*, peer interactions and individual student goal setting. CMMS is designed to address the unique needs of middle schoolers and it implements a team model. CMMS has needed staff to implement Student's IEP including special education teachers, social workers, counselors, a full-time school nurse, and classroom teaching assistants. CMMS is a large school, but the team approach limits the number of teachers, students and amount of the building students must traverse. CMMS general education class sizes are about 23 students, not larger than classes at CSK. Student will be with her friends from CSK and have access to extra-curricular activities. The District is ready, willing and able to implement the 8/20/2019 IEP at CMMS. The District is correct when it argues that HPDS is not the least restrictive environment (LRE) for Student as she has no access to non-disabled peers. (FF 172.)

Parent's argument that the goals were not finalized due to Parent's request to review the goals is unpersuasive. Parents requested time to review the goals knowing that if they accepted the IEP they would likely lose the \$1,250 non-refundable deposit they placed with HPDS on June 7, 2019. (FF 137.) Not agreeing appears to be parents attempt to strengthen their case for reimbursement and prospective placement.

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<sup>30</sup> *Heather S. v. State of Wisconsin*, 26 IDELR 870 (7<sup>th</sup> Cir. 1991)..

The preponderance of the evidence indicates that contrary to the Parent's assertion, the District offered Student appropriate goals (FF 152), accommodations and modifications (FF 153) and service minutes in the least restrictive environment (FF 154.) The preponderance of the evidence supports the District's assertions that the placement it offered is able to implement the IEP developed for Student. (FF 164 to 170.)

Parents have failed to meet their burden to prove that the District's proposed placement denies student a FAPE. Therefore, it is not necessary to determine whether the Parent's proposed program is appropriate.

I find, for the reasons set forth above, that during the relevant period, the District has identified Student's special education needs and appropriately address them. I find that Parent has failed to establish a past denial of FAPE to Student and that the District has offered Student a FAPE in the LRE for the 2019-2020 school year.

Accordingly, Parents requests for relief are denied.

#### **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 must specify the portions of the decision for which clarification is sought. A copy of the request must 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: February 25, 2020

*/s/ Kathleen C. Fuhrmann,*  
Hearing Officer

**APPENDIX A**

[REDACTED] v. [REDACTED] School District [REDACTED]

ISBE Case No: 2020 DP 0028

[REDACTED] child	“Student”
[REDACTED] Attending School	“HPDS”
[REDACTED] Elementary School	“CSK”
[REDACTED] Middle School	“CMMS”
[REDACTED] Mother/Petitioner	“Mother”
<b>Private School</b>	
[REDACTED] Principal [REDACTED]	“JS”
<b>Private Evaluators</b>	
[REDACTED] Ph.D	“Dr. B”
[REDACTED] M.S., CCC/SPL	“ML”
<b>School District staff</b>	
[REDACTED] Director of Special Education	“EB”
[REDACTED] School Social Worker	“MC”
[REDACTED] Special Education Teacher	“JD”
[REDACTED] Speech pathologist	“JB”
[REDACTED] Occupational Therapist	“KM”
[REDACTED] 5 <sup>th</sup> grade teacher	“JF”
[REDACTED] Middle school special education teacher	“KB”