

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

█,]	
Student,]	
]	CASE NO. 2020-DP-0080
v.]	
]	MARY SCHWARTZ
█ SCHOOL]	Impartial Hearing Officer
DISTRICT No. █]	
Local School District.]	

DECISION AND ORDER

JURISDICTION

This matter is before the undersigned hearing officer on the parents’ request for a due process hearing. This hearing officer has jurisdiction pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. § 1400 *et. seq.*, 105 ILCS 5/14-8.02a *et. seq.*, and 23 Il. Adm. Code § 226.600 *et. seq.* The parties have been fully advised of their rights pursuant to these statutes and regulations.

PROCEDURAL BACKGROUND

The parents filed their due process complaint on November 6, 2019 through their attorneys, █ and █, at █, LLC . The district is represented by █, who is with █. The Illinois State Board of Education appointed the undersigned as hearing officer in this matter on November 13, 2019. The undersigned issued several preliminary orders upon appointment, including a statement of the parties’ rights in these proceedings. The district filed its response to the parents’ complaint on November 19, 2019. The parties participated in mediation on December 20, 2019 but were unable to reach an agreement. The prehearing was held on January 17, 2020.

On March 17, 2020, the governor ordered the closing of all pre-K through 12th grade schools in Illinois. This impacted the hearing dates for this case, due to the unavailability of witnesses and a location for the hearing. The hearing dates were re-set

several times. The hearing was held virtually viz zoom on November 9, 10, 12, 13, and 16, 2020.

ISSUES PRESENTED AND REMEDIES SOUGHT

The issues raised in the parents' complaint, as discussed and agreed to during the January 17, 2020 prehearing conference, are as follows:

1. Whether the district failed to identify the student as a student with a disability and thereby failed its child find duty by:
 - a. Failing to consider an independent neuropsychological evaluation of the student that was done prior to the start of the 2016-17 school year;
 - b. Failing to consider data from the parents' private clinicians about the student's educational needs;
 - c. Failing to find the student IDEA eligible at the April 26, 2017 meeting, the September 2017 meeting, and the September 2018 meeting;

2. Whether the district failed to evaluate the student in all areas of suspected need, including:
 - a. Current achievement;
 - b. Language sample;
 - c. Formal pragmatic language testing per the November 1, 2018 domain sheet;
 - d. A SEL component, which had been identified in the domain;
 - e. Executive functioning;
 - f. Emotional functioning; and,
 - g. Occupational therapy (sensory, fine motor);

3. Whether the district failed to fully consider the parents' independent evaluations, including two neuropsychological evaluations and reports from private clinicians;

4. Whether the district failed to develop IEPs for the student that:
 - a. Addressed all the student's educational needs, including: reading fluency, spelling, social boundaries, anxiety; organizational skills/time

- management, sensory regulation, fine motor skills;
- b. Included appropriate, measurable goals and present levels of performance;
 - c. Provided the intensity of services and methodology required to meet the student's educational needs, including:
 - i. Assistive technology;
 - ii. Direct services in reading, writing and math;
 - iii. Parapro or special education teacher for academic classes; and,
 - iv. Research-based methodology for Specific Learning Disability and executive functioning deficits;
5. Whether the student required extended school year (ESY) services for summer 2018, 2019, and 2020 and if so, whether the district failed to provide ESY;
 6. Whether the district failed to propose a placement/ program for the student that included sufficient and appropriate academic instruction, including a private therapeutic school and/or structured language intervention programs to explicitly address the student's phonological, decoding, and encoding deficits;
 7. Whether the above-alleged violations denied the student a free appropriate public education (FAPE), and;
 8. Whether the [REDACTED] School-[REDACTED] is an appropriate placement for the student and her least restrictive environment.

As remedies for the above-alleged violations of the student's right to receive a FAPE, the parents request an Order stating that:¹

¹ The parents amended their requested relief in an email dated April 17, 2020, sent to the hearing officer and district's counsel. The remedies requested in this Decision and Order reflect that amended relief.

1. The district shall pay [REDACTED] School ([REDACTED]) directly for any outstanding costs for the student's placement for the remainder of the 2019-20 school year, including ESY 2020 and transportation costs;
2. The district shall reimburse the parents for their out-of-pocket costs for placement at [REDACTED] from ESY 2019 through the 2019-20 school year to date, including tuition and transportation;
3. As compensatory education, the district shall pay for an additional year of placement at [REDACTED] for the 2020-21 school year, including tuition, transportation, and ESY 2021; and,
4. The district shall reimburse the parents for the following expenses they paid to:
 - a. [REDACTED] School ([REDACTED]) \$98,410.00
 - b. Transportation round trip [REDACTED] \$2,804.88
 - c. Dr. T.: 2018 Neuropsychological Evaluation \$4,000.00;
 - d. Ms. K.: \$1,760.00 private social work services (\$ 560.00 2017-18; \$ 1,020 in 2018-19; \$ 180.00 2019-20);
 - e. Ms. S.: \$ 2,059.64 private occupational therapy services \$ 2,059.64 (\$1,209.86 2017-18; \$ 849.78 in 2018-19);
 - f. Ms. A.: \$ 9,100.00 private reading tutoring (\$ 4,480.00 2017-18; \$4,620.00 in 2018-19)

BURDEN OF PROOF

In an administrative hearing, the party seeking relief bears the burden of proof. *Schaffer v. Weast*, 126 S. Ct. 528, 539 (2005). Therefore, in this matter the parents have the burden of proof as they filed the due process complaint. Under Illinois law, the school district must provide evidence that it appropriately identified the student's educational needs and that the special education and related services it proposed are adequate, appropriate, and available. 105 ILCS §14-8.02a(g). This statutory provision requires the district to produce evidence but does not shift the burden of proof to the district. *Kerry M. v. Manhattan Sch. Dist. #14*, 106 LRP 5847 (N.D. Ill. 2006).

JOINT STIPULATIONS

The parties provided a list of Joint Stipulations to this hearing officer at the start of the hearing. The list is attached to the Order and Decision and incorporated herein. Stipulations are cited herein as “Stip. (a number).”

FINDINGS OF FACT

1. ■■■. was six years old when she began kindergarten in District ■■■ in fall 2016. Testimony, Mrs. A. The parents had delayed enrolling her in kindergarten upon recommendation of her preschool teachers and private therapists. *Id.* In pre-school, the student had a 1:1 aide and also received private therapies, including occupational therapy, sensory integration therapy for feeding problems, vision therapy, and social work services. *Id.* She had difficulty reading social cues and, although she was quite verbal, she did not have the “language to say what she needed.” Testimony, Mrs. A. The pre-school teacher provided her with a “toolbox full of manipulatives and activities” to help address her problems with regulation. Dist. Ex. 13, p. 17. Over the course of that year, ■■■.’s need for those materials lessened until she no longer needed them. *Id.* She made friends in her classroom and was focused in small group academic times. *Id.* The parents provided private services to address ■■■.’s difficulties with self-regulation, sensory integration, executive functioning, vision therapy, and therapy for feeding problems,. Testimony, Mrs. A.

2. Several months prior to the start of the 2016-17 school year, the parents asked the district to evaluate ■■■. for special education services. Jt. Ex. 2, p. 32. Their request was based on a private neuropsychological evaluation done by Dr. T. in spring 2016. *Id.* The parents had asked Dr. T. to evaluate ■■■ so they could provide the district with information on understanding her learning needs and providing supports to address her needs. Jt. Ex. 1, p. 2. Dr. T. is a licensed clinical psychologist and a certified school psychologist. P. Ex. 29, p. 192. She has worked for several school districts, including District ■■■ as

a school psychologist. *Id.*, pp. 193, 194.

3. The district received Dr. T.'s neuropsychological evaluation on May 4, 2016. Jt. Ex. 2, p. 32. Dr. T. evaluated the student's intelligence, achievement, memory, perceptual, and executive functioning. Jt. Exh. 1, p. 5. She also reviewed records from private providers, interviewed the parents and preschool teacher, and observed ██████. in her preschool class. Testimony, Dr. T. Based on her evaluation, Dr. T. determined that ██████. has "average cognitive abilities in verbal, visual spatial, working memory and processing speed and high average abilities on fluid reasoning tasks." Jt. Ex. 1, p. 21. Her academic skills ranged from the low end of average to the middle of the average range. *Id.* Her language skills ranged from superior to average, due to executive functioning problems. *Id.*, pp. 21, 22. She had difficulty processing auditory and visual information simultaneously. Testimony, Dr. T. Dr. T. described ██████.'s learning needs and recommended accommodations such as extended time, structure and breaks, repeating instructions clearly and concisely, social skills support, preferential seating, movement breaks, and a re-evaluation in 36 months. Jt. Exh. 1, pp. 25-27. She diagnosed the student with developmental delay in the areas of regulation, social skills, and sensory integration and anxiety as a secondary diagnosis. *Id.*, p. 25.
4. On May 9, 2016, the district held a meeting to review Dr. T.'s evaluation report. Jt. Ex. 2, p. 32; Jt. Ex. 3, p. 33. Mr. S., the district's special education director, attended the May 9th meeting. Jt. Ex. 3, p. 33; Testimony, Mr. S.; Dist. Ex. 34, p. 74. Mr. S. has a M.A. in teaching and a learning behavioral specialist endorsement. Ex. 34, p. 74. The mother shared information about ██████.'s strengths and difficulties in pre-school: she is "verbal and articulate," needs structure, and has difficulty with self-regulation. Jt. Ex. 3, p. 33. The district denied the parents' request for a special education evaluation on May 11, 2016 because it did not "suspect a disability that would require special education and related services at this time." Jt. Ex. 2, p. 32; Testimony, Mr. S. The team agreed to have the social worker observe ██████. in September and to "implement some strategies for regulation and social skills support." Jt. Ex. 2,

p. 32.

5. On September 14, 2016, district staff and the mother met to review how [REDACTED] was adjusting to kindergarten. Testimony, Mr. S.; Jt. Ex. 3, p. 34. The classroom teacher reported that she was doing well academically and felt comfortable in the classroom. Jt. Ex. 3, p. 34. She had a box of sensory tools to use when dysregulated and had used it only once. *Id.*; Testimony, Mr. S. The meeting notes report that the student's private social worker and occupational therapist provided information about addressing the student's regulation problems. *Id.*

6. Ms. W. is the reading intervention specialist at the public school. Testimony, Ms. W. She has a master's degree in reading and has been the school's reading specialist for 11 years. *Id.* She provided pull-out reading and writing services five days/week to [REDACTED] in January 2017 using Fontas & Pinnel, which is a leveled literacy intervention. *Id.* Although Ms. W. testified that the student was doing well and making expected growth, the student's kindergarten report card states that she was not making expected progress in reading "grade level text with 95% accuracy." Testimony, Ms. W.; Jt. Ex. 4, p. 38.

7. [REDACTED] began private reading therapy with Ms. M.A. in April 2017. Testimony, Ms. M.A. Ms. M.A. has two master's degrees: one in speech/language pathology and the other in learning disabilities. P. Exh. 21, p. 66. She also holds ISBE Type 10 certifications for Speech/Language Impaired and for Learning Behavior Specialist I. *Id.* When she began working with [REDACTED], the student did not know all her letter sounds, had difficulty with short vowels and blending sounds and generating rhymes, showed inefficiency in retrieval, and did not look at a word as a unit. Testimony, Ms. M.A. She worked with [REDACTED] on decoding and encoding. *Id.* She began each session by reviewing the prior session, and if [REDACTED] was "ready for a new step," they went on. *Id.* Ms. M.A. was careful not to present too much information at a time so that [REDACTED] could master a skill before moving on. *Id.* The student benefitted

from having information broken down into steps and then working toward mastery. *Id.* Ms. M.A. used multi-sensory techniques - e.g., writing a word on a card in red, having [REDACTED] tap sounds on her arms so she could feel them, having her write in the air for gross motor stimulation or write words in sand so she could feel them. *Id.* These techniques addressed [REDACTED]'s problems in decoding and letter/sound correspondence. *Id.* Ms. M.A. used Orton Gillingham (OG) and Wilson programs because both are research-based to remediate specific learning disabilities. *Id.* Ms. M.A. testified that [REDACTED] has a learning disability in reading, which impacts her ability to decode words. *Id.*

8. The student's end of the year kindergarten report card (June 2017) indicates that she met grade level standards in English/Language Arts, math, drama, music, and physical education. Jt. Ex. 4, pp. 38, 39. However, she did not meet grade level standards in two areas: reading grade level text with 95% accuracy and counting up to 20 objects and understanding that the number of objects did not change with a different arrangement or order in which they were counted. *Id.* This contradicts Ms. W.'s testimony that the student was making expected growth.
9. The district held a 504 meeting at the beginning of [REDACTED]'s first grade year, on September 20, 2017. Jt. Ex. 5, p. 40. The team reviewed parent and teacher input, observation data, and Dr. T.'s 2016 evaluation. *Id.* The district adopted Dr. T.'s findings of "developmental delay in the areas of emotional regulation, social skills, sensory integration. Anxiety is secondary to the above delays." *Id.* It did not, however, address her educational recommendations, including monitoring the student's "early reading skills to determine skill deficit and impact of regulatory capacities on reading decoding." Jt. Ex. 1, p. 26. Ms. R., the district's occupational therapist, attended the meeting and addressed questions about the student's self-regulation and attention in the classroom. Testimony, Ms. R. She had observed the student in her first grade classroom for 30 minutes. Jt. Ex. 8, p. 50. The student's sensory strategies at that time included chewing gum, movement breaks, and heavy work opportunities. *Id.* The team found [REDACTED].

- eligible for 504 services and developed a 504 Plan that included sensory accommodations and materials, repeating directions to ensure understanding, teacher assistance with organization of materials, and extra time. *Id.*, p. 42.
10. Ms. McM., the student's first grade teacher, used Words Their Way for the student's reading program. Testimony, Ms. McM. The program monitors a student's progress to determine if the student is moving forward. *Id.* The program starts with beginning and ending consonants and moves through a progression of reading skills. *Id.* A different program was used for comprehension. *Id.*
 11. The district developed an Intervention Plan to address the student's word recognition skills. Jt. Ex. 9, p. 52. Ms. W., the district's reading intervention specialist, worked with [REDACTED] in a small group setting daily for 30 minutes. Testimony, Ms. W. The district uses the Developmental Reading Assessment (DRA) to measure a student's progress. *Id.* It is given by the classroom teacher. *Id.* On the DRA, the student's baseline score was 3 in September 2017. Jt. Ex. 9, p. 52.
 12. The parents continued to provide outside services, including occupational therapy (OT), feeding OT, social work, social skills group, vision therapy, and reading tutoring with Ms. M.A. Dist. Ex. 12, p. 14. The parents asked that [REDACTED] be allowed to leave early one afternoon a week to receive the private services. *Id.*
 13. Ms. R. conducted an OT evaluation of the student in January 2019. Jt. Ex. 17, p. 140. She administered the Beery-Buktenica Developmental Test of Visual-Motor Integration (Berry VMI, 6th Ed.) to assess the visual-motor concerns that had been raised in an outside report provided by the parents. Testimony, Ms. R. She found that [REDACTED] was within the average range on all subtests, and her fine motor skills were an "area of strength." *Id.* She also observed the student in the classroom. *Id.* [REDACTED] had several sensory strategies – chewing

gum, noise-cancelling headphones, and sit-n-move cushions – and the classroom teacher reported that [REDACTED]. used those as needed. Based on her assessment, Ms. R. found that the student had “strengths in the area of visual-motor integration, visual perception and motor coordination skills, and legible hand writing” and some deficits in handwriting, e.g., interchanging lower and uppercase letters, reversals in the number 9, and not starting a sentence with a capital letter. *Id.*, Jt. Ex. 17, p. 142. She did not recommend OT services in school because the student’s underlying skills did not have an “educational impact” in the school setting. Testimony, Ms. R. Ms. R. did not assess the student’s executive functioning skills, organizational skills, or time management skills. *Id*

14. The 504 team met in May 2018 to review and update the student’s 504 Plan. Jt. Ex. 5, p. 42; Testimony, Mr. S. The first grade teacher reported that [REDACTED]. had “some holes in her learning,” so the team agreed to meet within the first few weeks of the second grade school year to review “her start of the year academic data.” *Id.*

15. In Fall 2018, Dr. T. conducted a re-evaluation of [REDACTED]. Jt. Ex. 12, p. 61. The evaluation took place over six dates from August to October 2018. *Id.* Dr. T. noted that [REDACTED]. “displayed internal distractibility” throughout the evaluation and had difficulty on timed tests. *Id.*, p. 62. Although the student “performed to the best of her ability on each measure,” Dr. T. advised that the results “should be interpreted with caution as they may be a minimal estimate of her abilities” due to her academic weaknesses and processing deficits, *Id.*, p. 63. On the Wechsler Intelligence Scale for Children, 5th Ed. (WISC-V), [REDACTED]. scored in the high average range on the verbal index (81st %ile) and in the average range on the visual-spatial index (70th %ile). *Id.*, p. 64. Her working memory index was in the low average range, at the 12th %ile, and her processing speed index was also in the low average range, at the 23rd %ile. *Id.*, p. 64. Because of this variability, Dr. T. found that her General Ability Index of 117 more accurately reflects her individual performance. *Id.* That score is at the 87th %ile and in the high average range. *Id.* The BRIEF 2, which measures executive

functioning skills, was completed by the student's mother and teacher. *Id.*, p. 71. Each indicated clinically significant executive dysfunction. *Id.*, p. 72. Dr. T. used the WIAT-III to evaluate ■■■'s language and verbal processing. *Id.*, p. 74. Her scores ranged from the 90th %ile on receptive vocabulary to the 30th %ile on expressive vocabulary, indicating an expressive language weakness. *Id.*

16. Dr. T. also assessed ■■■'s academic achievement. On the WIAT-III, her basic reading ability (25%), total reading performance (23%), and sight word vocabulary (23%) were at the low end of the average range. Jt. Ex. 12, p. 79. These scores are "substantially lower than anticipated based on her overall verbal ability." *Id.*, p. 80. ■■■. showed letter and number reversals, inconsistent mastery of beginning and ending sounds, and a fluency weakness. *Id.* On the GORT-5, her oral reading quotient was at the 10th %ile, which is "significantly below grade level standards." *Id.*, p. 81. Her reading accuracy was at the 9th %ile. *Id.* Based on her comprehensive assessment, Dr. T. found that while ■■■'s cognitive skills are within the average range, her academic performance is impacted by her language deficits, slow processing speed, attention, and working memory. *Id.*, p. 85. Those deficits impact her verbal and reading comprehension, and her basic reading ability is "substantially below her overall abilities and below her same-age peers." *Id.*, p. 86. Her comprehension ranged from the 9th %ile to the 55th %ile. *Id.* Dr. T. emphasized that "the current test scores do not reflect baseline skills but rather reflect the result of intensive intervention" since Dr. T.'s prior evaluation. *Id.*, p. 87. ■■■'s "reading disorder" interferes with her comprehension and her ability to express herself and impacts other academic areas, including spelling and math word problems. *Id.*, p. 87. Based on her evaluation, Dr. T. found that "the findings on her reading performance are consistent with dyslexia, also known as a Specific Learning Disorder, with impairment in Reading." *Id.*, p. 86. She also diagnosed ■■■ with a language disorder and specific learning disorders (SLD) in reading, spelling, math, and written expression. *Id.*, pp. 91.

17. Dr. T. recommended that the district develop an IEP to address the foregoing identified disorders. Jt. Ex. 13, p. 91. She recommended “specialized and deliberate instruction daily” in reading fluency and comprehension, using a curriculum that is an evidence-based intensive program for students with dyslexia. *Id.*, p. 91. Because of her complex profile, [REDACTED]. needs a “multi-sensory structured language approach... with the appropriate intensity (daily) and duration.” *Id.*, p. 92. The intervention “should also be applied to spelling.” *Id.* The intervention “must be intensified” to close the gap with her peers. *Id.* Dr. T. also recommended individualized instruction in written expression and a speech/language evaluation. *Id.* The evaluation report includes numerous accommodations and modifications to address organization, written expression, and comprehension of oral materials. *Id.*, p. 93.
18. Ms. A., the student’s second grade teacher, worked with her on reading, writing, and math. Testimony, Ms. A. She described [REDACTED]. as “engaged” but also said she had difficulties with paying attention, sensory regulation, and organizational skills. *Id.* The student’s math MAP scores in 2018 were below both grade and district levels. Jt. Ex. 22, p. 166
19. The 504 team reconvened on November 1, 2018 to review Dr. T.’s re-evaluation. Jt. Ex. 13, p. 101. The parents had provided the district with the report on or about October 29, 2018. Jt. Stipulation #9. The district added several new accommodations to the 504 Plan to address [REDACTED].’s problems with self-regulation, processing of simultaneous visual and auditory stimulation, and other sensory issues. Jt. Ex. 13, p. 103.
20. The district then discussed the parents’ request for a special education evaluation. Jt. Ex. 14, p. 108. The domain sheet indicates that [REDACTED]. was reading at level 14 on the DRA. *Id.*, p. 111. That score is six levels below where she should have been reading, level 20. *Id.*, p. 111. Information about Dr. T.’s evaluation is included in cognitive functioning and does not mention a specific learning disability. *Id.*, p. 112. However, the health section reports

that [REDACTED]. was diagnosed with specific learning disorders in reading, spelling, math, and written expression. *Id.*, p. 113. After reviewing the domains, the district agreed to: review academic records, classroom and district assessments, and curriculum based measures; conduct a classroom observation; conduct a formal language assessment and sample, including an observation of the student; obtain a health history and updated hearing and vision information; conduct an occupational therapy evaluation; and, obtain a social developmental history and social emotional rating scale. *Id.*, pp. 111-113; Testimony, Mr. S. Mr. S. “explained that eligibility under the category of a specific learning disability in schools is not based on diagnoses but is a response to intervention model.” *Id.*, p. 115. The district also agreed to “revise (the student’s) intervention plan to include more of a focus on decoding/ phonics instruction using a multi-sensory approach,” conduct a case study evaluation, and consider eligibility for special education. *Id.*

21. The district conducted a psycho-educational evaluation on January 18, 2019. Jt. Ex. 16, p. 134. It included a records review, classroom observations, a review of Dr. T.’s evaluation, and curriculum based measures. *Id.* Ms. G., the school psychologist, found that [REDACTED]. had “made continuous progress in her reading achievement” since entering the district. *Id.*, p. 139. The student had received reading intervention services for 30 minutes / day since January of her kindergarten year. *Id.*, p. 134. She read at a second grade level and was “about one level behind benchmark expectations.” *Id.* Her reading program, Lexia, is “a computer-based reading program that focuses on various aspects of reading fluency.” *Id.*, p. 135. According to Ms. G., the student’s math and reading scores on the WIAT-III were within the average range. *Id.*, p. 137.
22. The district also conducted an occupational therapy (OT) evaluation. Jt. Ex. 17, p. 140. Ms. R., the district’s OT, is a certified OT and licensed in Illinois. Testimony, Ms. R. She reviewed the student’s records, interviewed the teacher, conducted a classroom observation, and administered the Beery VMI, 6th Ed. *Id.* On the Beery VMI, the student’s scores were within the average range. *Id.*, p. 141. Her handwriting was legible, and she used correct spacing

- and placement. *Id.*, p. 142. There were no concerns about functional school skills, behavior or sensory responsiveness. *Id.* On the Sensory Profile, ■■■. scored “more than” in the area of needing a lot of sensory input to register in the brain. *Id.*, p. 143. Based on her evaluation, Ms. R. found that ■■■. has strengths in visual motor integration, visual perception, and motor coordination. *Id.*, p. 145. She has deficits in “the area of sentence skills.” *Id.*
23. The district’s speech-language evaluation included a records review, a behavioral observation, and a formal assessment using the Clinical Evaluation of Language Fundamentals, 5th Ed. (CELF-5th). Jt. Ex. 18, pp. 147-150. The evaluator, Ms. M., administered the CELF-5th Ed. and talked with the classroom teacher. *Id.*, p. 147. Although the teacher did not raise any concerns about ■■■.’s pragmatic language skills, she did report that ■■■. had “boundary issues” with some students. *Id.* Her articulation skills and oral motor skills were age appropriate. *Id.* Fluency was within normal limits, though it was noted that she “speaks quickly when excited or upset.” *Id.*, p. 150. Based on her assessment, Ms. M. determined that ■■■. has age appropriate expressive language skills and above average receptive language skills, and her fluency and voice are within normal limits. *Id.*, pp. 149, 150.
24. The district social worker conducted a social developmental study, which included a developmental history, health history, and discussion of family relationships. Jt. Ex. 19, pp. 151 - 157. The report indicates that the social worker interviewed the student and mother. *Id.*, p. 152. However, there is nothing in the body of the report that indicates an interview with the student.
25. The district held an eligibility meeting on January 25, 2019. Jt. 15, p. 120. The parents and Dr. T. attended the meeting. *Id.* The domain documentation reports that ■■■.: “made continuous progress in her reading achievement” and “was able to read second grade level text”; had “a solid grasp and understanding of her receptive and expressive language;” and, showed “age-appropriate expressive language skills and above average receptive language skills.” *Id.*, p. 122. Information about her visual problems/therapy, health

history, occupational therapy, motor development, and social/emotional status is also noted, including the private OT and social work services the student received. *Id.*, pp. 122, 123. The document reports that ██████'s rate of progress in reading "is acceptable and is not discrepant but only because of the intensity of intervention that is being provided." *Id.*, p. 125. The district determined that ██████ did not "meet the eligibility criteria for a specific learning disability" and was not eligible for special education services because her needs could be met in the general education setting, where she was "receiving intervention with the reading specialist.... that is available to all students." *Id.*, p. 131. The district stated that the parents could "discontinue some of the private services" and see how that impacted ██████'s school performance. *Id.* The district recommended that the student's reading intervention "focus more on phonemic awareness and phonics using a multi-sensory program." *Id.*

26. The parents filed a Statement of Disagreement, noting Dr. T.'s diagnosis of specific learning disabilities. Jt. Ex. 20, p. 158. They also noted that ██████ had received three years of RTI services for reading but still struggled with reading. *Id.* They requested an IEP to address their daughter's learning needs. *Id.*
27. Ms. M.A. filed a letter of support on behalf of the parents, stating that ██████ "requires support beyond what can be provided in a general education classroom to make adequate progress comparable to her same-age peers." Jt. Ex. 24, p. 168. Based on her work with the student, ██████ needs a "systemic and explicit approach" to address her weaknesses in decoding and phonological awareness. *Id.*, p. 169.
28. The district revised the student's 504 Plan on February 22, 2019. Jt. Ex. 21, p. 159. Although the Plan identifies the student's impairments as those listed in Dr. T.'s evaluation - Language, SLD, ADHD-combined, and Generalized Anxiety Disorder - the accommodations are essentially the same as those in her prior 504 Plan. *Id.*, p. 161. The accommodations address sensory

regulation, organization of materials, organization of ideas, executive functioning, attention / focus, testing, and self-regulation. *Id.* Ms. S., the student's private occupational therapist, attended the February meeting. *Id.* She has worked with the student since pre-school. Testimony, Ms. S. The student has difficulty breaking down tasks "into manageable chunks" and in staying regulated. *Id.* She also has difficulty focusing and needs time to process information. *Id.* The student's private social worker, Ms. K., provided an update on her work with [REDACTED]. Jt. Ex. 23, p. 167. Ms. K. described many ways in which the student had grown over the years and expressed concern that the student's difficulty in school was "impacting her self-esteem and self-confidence at times." *Id.*

29. In Spring 2019, the parents applied to the [REDACTED] School ([REDACTED]) for its summer instructional program. Jt. Stipulation #13. The school reviewed the information provided by the parents, including Dr. T.'s evaluation, and accepted her for the program. *Id.* The school uses a 12 step multi-sensory, structured research-based Wilson Reading System program. Jt. Ex. 33, p. 234. The language arts program focuses on reading comprehension [REDACTED]. [REDACTED] responded well to the structured educational program, which included goals for structured reading, language arts, and math. *Id.*, pp. 234-237.
30. The parents were very pleased with their daughter's progress at [REDACTED] and on August 7, 2019, they informed the district that they were placing [REDACTED] at [REDACTED] beginning August 26, 2019 because of the district's failure to provide her with a free appropriate public education. PD 11, p, 42.; Jt. Stipulation #14. They asked the district to fully fund the placement, including transportation, from the date of [REDACTED]'s admission forward. *Id.*
31. On September 6, 2019, the district held a meeting to discuss the parents' request to have [REDACTED]. "placed at [REDACTED] School through a district special education placement." Jt. Ex. 28, p. 198. The district reconsidered her eligibility for special education and found her eligible as a student with an other health impairment (OHI) based on "her diagnoses of a language

disorder, learning disorders, ADHD, and generalized anxiety disorder.” *Id.* The mother asked the district to reconsider special education eligibility of SLD. *Id.* The district determined that she did not meet the eligibility criteria for a specific learning disability. *Id.* The district then drafted IEP goals: 1) social work to address perspective taking and problem solving; 2) academic - “count the number of syllables... and determine what kind of syllable she is decoding”; 3) academic - “when provided with a word problem with a graph or table, (the student) will be able to underline or highlight the question or information being asked and determine what step(s) she must take; and 4) academic/functional – “demonstrate increased independence and stamina completing teacher-directed academic tasks.” Jt. Ex. 28, pp. 203-206.

32. Ms. B. testified for the district on what it would have offered [REDACTED]. had she stayed in the district school. Testimony, Ms. B. She was a reading specialist with the district for one year and taught second grade for many years. *Id.* Ms. B. has training in Wilson and earned her Level 1 dyslexia practitioner title after completing a year-long practicum. The undersigned finds Ms. B.’s testimony speculative, as she has never met or worked with the student.

33. Ms. M.M. is the principal at [REDACTED] School-[REDACTED] ([REDACTED]N). Testimony, Ms. M.M. She has two master’s degrees, one in reading and learning disabilities and the other in supervision/administration. *Id.* She also has her Type 75 administration certificate, Type 3 elementary education, and Type 10 learning behavior specialist. *Id.* The [REDACTED]N campus has 64 students, in grades one through eight *Id.* The school’s goal is to provide intensive remediation to get a student up to grade level skills so s/he can confidently go back to public school. *Id.* Students are placed in small groups for reading and math and large groups for other subjects. *Id.* Specialized services are integrated, so that students have both pull-out and push-in services. *Id.* Class schedules block out times for development of executive functioning skills and social skills. *Id.* There are eight students in a class and two teachers, one of whom is a LBS. *Id.*

34. ■■■■■N uses the Wilson program for teaching decoding and fluency and uses Step Up 2 Writing for instruction in writing skills. Testimony, Ms. M.M. Reading instruction is 60 minutes/day of Wilson, and language instruction is also for 60 min/day. *Id.* Writing instruction is addressed throughout the day and also in a 30 minute block. *Id.* Math instruction is 75 minutes/day. *Id.* Related services staff are available for push-in or pull-out services, per a student's needs. *Id.* When ■■■■■ began at ■■■■■N, she was at Step 2 of the Wilson program. Testimony, Ms. M.M.; Jt. Ex. 33, p. 232. She receives occupational therapy and social work services weekly. Testimony, Ms. M.M.
35. ■■■■■.'s third grade Individual Learning Plan (ILP) has goals for reading, writing, and math, and includes related services of occupational therapy and social work. Jt. Ex. 34, pp. 242-261. The school began distance learning on March 13, 2020 due to the mandatory COVID-19 school closure order. Jt. Ex. 13, p. 238. ■■■■■. has met three of her five reading goals, and the other two are "in process." *Id.*, pp. She met three of her seven writing goals and the others are "in process." *Id.*, pp. 250-252.
36. The student's fourth grade ILP has goals for reading, writing, math, and OT, social work, and study skills. Jt. Ex. 41, pp. 293-303. Her reading goals address: decoding and encoding; applying multi-sensory strategies in reading and spelling; increasing oral reading skills, using active reading strategies, and applying strategies to strengthen recall of new vocabulary. *Id.*, p. 297. Her reading fluency has gone down while her writing has gone up. Testimony, Ms. M.M. Her math scores vary slightly, some a bit higher (operations 203-215 this year and 181-190 last year) and some lower (RIT percentile 51 this year and 52 last year). Jt. Ex. 34, p. 253; Jt. Ex. 41, p. 300.) ■■■■■. also receives occupational therapy for 30 minutes/week and social work services for 30 minutes/week. *Id.*, pp. 303-305. The plan also includes accommodations and modifications. *Id.*, pp. 306-309. ■■■■■. has been more dysregulated this year, possibly because of the COVID closure and distance learning, and that has impacted her availability for learning. Testimony, Ms. M.M.

37. On September 6, 2019, the district held a meeting with the student's mother to discuss the parents' request that the district place the student at ██████ Jt. Ex. 28, pp. 186, 198. The district reconsidered eligibility and suggested OHI. *Id.*, p. 198. The mother proposed specific learning disability. *Id.* The district determined that ██████. has an other health impairment of "Language Disorder; Specific Learning Disorder with Impairment in Reading and Spelling, Mathematics, and Written Expression; Attention-Deficit Hyperactivity Disorder, Combined Type; and Generalized Anxiety Disorder" as found in Dr. T's October 2018 evaluation report. *Id.*, p. 194. The district did "not believe" that ██████. met the criteria for a specific learning disability. *Id.*, p. 198. The document indicates that the student has "challenges with working memory, attention over time, divided attention, executive functioning, decoding, math problem solving, and anxiety." *Id.*, p. 195. Based on the foregoing, the district found that the student met the criteria for other health impairment (OHI) and requires specialized instruction and social work services in school. *Id.*, p. 197. The district developed a social work goal and three academic goals. *Id.*, pp.203-206. The district proposed 45 minutes/day of specialized reading instruction, using a multi-sensory program, and 30 minutes/week of social work services. *Id.*, p. 218. Two of the student's private providers wrote letters in support of her placement at ██████N. Jt. Exs. 29, 30.
38. The parents informed the district on August 7, 2019 that they were unilaterally placing their daughter ██████. at ██████N on August 26, 2019 and expecting the district to assume full financial responsibility for the placement as the district failed to provide the student a FAPE. Parents' Ex. 11, p. 42.

STATUTORY FRAMEWORK

The purpose of the IDEA is to ensure that all children with disabilities receive a free appropriate public education and related services "designed to meet their unique needs and prepare them for further education, employment and independent living." 20 U.S.C. §1400(d)(1)(A). A district must comply with the IDEA's procedural and substantive requirements in order to provide a free appropriate public education

(FAPE) to a student. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176 (1982) (“Rowley”). To meet its substantive obligation, a district “must offer an IEP reasonably calculated to enable the student to make progress in light of the student’s circumstances.” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001; 69 IDELR 174 (2017) (“Andrew F.”).

A parent of a student may request that the district conduct an initial evaluation. 20 U.S.C. §1414(a)(1)(B). The district must conduct the evaluation within 60 days of receiving parental consent. 20 U.S.C. §1414(a)(C)(i)(I). The district’s assessment must use a “variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent.” 20 U.S.C. §1414(b)(2). The child must be assessed in all areas of suspected disability. 20 U.S.C. §1414(b)(3)(B). In determining whether a student has a specific learning disability, the district “may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures.” 20 U.S.C. §1414(b)(6)(B). A specific learning disability is “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as..... dyslexia.” 34 C.F.R. §300.8(c)(10). Illinois law defines dyslexia as a “specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities.” 23 IAC §226.125(a). Illinois regulations require that “each child suspected of having dyslexia or identified as dyslexic *shall* be referred for an evaluation” in accordance with” federal and state law. 23 IAC 226.125(c) (emphasis added).

Once a student is determined eligible for special education and related services, the school district must develop an individualized education program (IEP) for the student. 20 U.S.C. §1414(d). The IEP offered to the student must provide “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F.*, 69 IDELR 174 (2017). The IEP must include a statement of the child’s present level of academic achievement and functional performance (PLOP), measurable annual goals that will meet the child’s

needs, a description of how the child's progress toward meeting the annual goal will be measured, and a statement of the special education and related services that is to be provided to the child. 20 U.S.C. § 1414(d)(1)(A)(i)(I), (II), (III). Special education is specially designed instruction to meet a student's unique needs. 34 C.F.R. 300.39(a)(1). Special education instruction must be based on peer-reviewed research, to extent practicable. 20 U.S.C. § 1414(d)(1)(A)(i)(IV).

In rendering this decision, the undersigned has considered all documents entered into evidence, testimony by the parties' witnesses, the parties' closing arguments and their proposed case law, as well as independent research. This decision is issued within ten business days after the end of the hearing. 105 ILCS 5/14-8.02b(k).

CONCLUSIONS OF LAW

Whether the district failed to identify [REDACTED] as a student with a disability and thereby failed its child find duty by failing to: a) consider an independent neuropsychological evaluation of the student that was done prior to the start of the 2016-17 school year; b) consider data from the parents' private clinicians about the student's educational needs; and, c) find the student IDEA eligible at the April 26, 2017 meeting, the September 2017 meeting, and the September 2018 meeting:

The parents filed their due process complaint on November 6, 2019. The IDEA's two-year statute of limitations (SOL) began to run on the day the complaint was filed. Both the April 26, 2017 and September 20, 2017 meetings are outside of the SOL. The parents did not raise an exception to the statute of limitations in their complaint; therefore, claims prior to that date may not be heard. While the record does not show that there was a meeting in September 2018, the district did convene a 504 meeting on November 1, 2018 to review Dr. T.'s re-evaluation and the parents' request for a special education evaluation. ¶19. Dr. T. had diagnosed [REDACTED] with dyslexia, which is a specific learning disability in reading, and with specific learning disorders in math, written expression, and spelling. ¶15. The district agreed to conduct an evaluation, and the mother gave written consent for it to do so. *Id.*

The IDEA requires that an evaluation must: “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent.” 20 U.S.C. §1414(b)(2). The student must be assessed in all areas of suspected disability. 20 U.S.C. §1414(b)(3)(B). The evidence shows that the district’s evaluation consisted of a records review, classroom observations, a review of Dr. T.’s evaluation, and curriculum based measures. Jt. Ex. 16, p. 34. This records review does not meet the standard set out in the IDEA. 20 U.S.C. §1414(b)(3)(B). In contrast, Dr. T.’s evaluation included assessments of [REDACTED]’s cognitive functioning, language and verbal processing, and academic achievement. ¶ 15, 16.

The district has the burden of showing that “the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate, and available.” 105 ILCS 5/14-8.-2a(g-55). The district has not met its burden in showing that it appropriately identified this student’s educational needs,

Whether the district failed to evaluate the student in all areas of suspected need, including: a) current achievement; b) language sample; c) formal pragmatic language testing per the November 1, 2018 domain sheet; d) a SEL component, which had been identified in the domain; e) executive functioning; f) emotional functioning; and, g) occupational therapy (sensory, fine motor):

The November 1, 2018 domain sheet requires the following additional evaluation data: a review of the student’s academic records, classroom and district assessments, and curriculum based measures; classroom observations; a formal language assessment and a language sample analysis observation; a health history; an updated hearing screening and review of parent provided vision exam; an occupational therapy evaluation; and, a social developmental history and social emotional rating scale done by the teacher. Jt. Ex. 14, pp. 112, 113, 115. The evidence shows that the district’s January 2019 evaluation included a records review, a classroom observation, a review of Dr. T.’s evaluation, and curriculum based measures. ¶ 20. It did not include standardized assessments of the student’s emotional, functional, language, or academic performance. The district did conduct an OT evaluation, which included a classroom

observation and standardized assessments. The student's scores on the Beery VMI were within the average range. ¶21. She had legible handwriting and used correct spacing. *Id.* No concerns were noted in functional school skills, behavior, or sensory responsiveness. *Id.* The student's executive functioning skills were not assessed. *Id.* A speech-language evaluation, which consisted of one assessment and a records review, found that [REDACTED]. [REDACTED] had age appropriate expressive language skills and above average receptive language skills. ¶ 23. The district also obtained a social developmental history and interviewed the student and her mother.¶ 24. Based on the foregoing information, the undersigned finds that while the district conducted observations and reviewed records, it failed to conduct standardized assessments in several areas and thereby failed to evaluate [REDACTED]. in all areas of suspected need.

Whether the district failed to fully consider the parents' independent evaluations, including two neuropsychological evaluations and reports from private clinicians:

A district must consider a parent-initiated evaluation in "any decision made with respect to the provision of FAPE to the child." 34 CFR §300.502(c)(1). Dr. T.'s 2018 neuropsychological evaluation is the central parent-initiated evaluation in this case. Dr. T.'s evaluation was comprehensive, including assessments of the student's intellectual abilities, executive functioning skills, attention, processing skills, language skills, memory, academic achievement, and social emotional functioning. Jt. Ex. 12, pp. 63-84. Based on her evaluation, Dr. T. determined that the student has specific learning disorders in reading, spelling, math, and written expression. *Id.*, p. 91. She diagnosed the student with dyslexia, which is a specific learning disorder in reading. *Id.*, p. 86. That diagnosis is the focus of this case. The district received and reviewed the evaluation. Jt. Ex. 13-15. The district members of the IEP team determined that the student "is not eligible under the category of a specific learning disability and not eligible for special education services." *Id.*, p. 131. Despite Dr. T.'s diagnosis of dyslexia, the district found that the student "does not meet the eligibility criteria for a specific learning disability." *Id.* This determination stands in stark contrast to the Illinois special education regulations, which state that "dyslexia means a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties

typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction.... Dyslexia is one of a number of disorders included as a specific learning disability that may adversely affect the student's educational performance and result in the child's eligibility for special education and related services." 23 IAC §226.125(a). This regulation requires that a child suspected of having dyslexia or identified as dyslexic *shall* be referred for an evaluation." 23 IAC §226.125(c) (emphasis added). Despite Dr. T.'s evaluation and diagnosis therein, the district determined that "specialized instruction is not required in order for the student to make progress" and found [REDACTED] not eligible for special education services. Jt. Exh. 15, p. 127. Based on the foregoing, the undersigned finds that the district did not fully consider Dr. T.'s evaluation report and thus failed to address the student's educational needs.

Whether the district failed to develop IEPs for the student that: a) addressed all her educational needs, including: reading fluency, spelling, social boundaries, anxiety; organizational skills/time management, sensory regulation, fine motor skills; b) included appropriate, measurable goals and present levels of performance; c) provided the intensity of services and methodology required to meet the student's educational needs, including: i) assistive technology; ii) direct services in reading, writing and math; iii) parapro or special education teacher for academic classes; and, iv) research-based methodology for Specific Learning Disability and executive functioning deficits:

Once a student is determined eligible for special education and related services, the school district must develop an individualized education program (IEP) for the student. 20 U.S.C. §1414(d). The IEP offered to the student must provide "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017) ("Andrew F.").

The IEP must include a statement of the child's present level of academic achievement and functional performance, measurable annual goals that will meet the child's needs, a description of how the child's progress toward meeting the annual goal will be measured, and a statement of the special education and related services that is to

be provided to the child. 20 U.S.C. § 1414(d)(1)(A)(i)(I), (II), (III). Special education is specially designed instruction to meet a student's unique needs. 34 C.F.R. 300.39(a)(1). Special education instruction must be based on peer-reviewed research, to extent practicable. 20 U.S.C. § 1414(d)(1)(A)(i)(IV).

The IEP team met on September 6, 2019 to consider the parents' request to place ██████. at ██████ Jt. Ex. 28, p. 198. The district found ██████. IDEA eligible as a student with an other health impairment. ¶ 31. The district found that ██████. did not meet the criteria for a specific learning disability and did not require specialized instruction to make educational progress. Jt. Ex. 28, p. 191. The district considered the parents' request for a placement at ██████ and denied it on the basis that it is not the student's least restrictive environment. *Id.*, pp. 216, 218. The district offered a placement in the public school with individual instruction in the Wilson Reading System by a teacher who was Wilson trained and received the Wilson Dyslexia Practitioner title in June 2020. Jt. Ex. 28, p. 218; Testimony, Siegler. The parties discussed the parameters of the program, which would be in the general education setting with special education supports for 45 minutes/day. *Id.* The district did not agree to ██████ because it was not the student's least restrictive environment. *Id.* Based on the district's determination that the student has an other health impairment and not dyslexia, the undersigned finds that the proposed IEP does not meet the student's educational needs. The record clearly supports a finding that the student has dyslexia, a language disorder, and specific learning disorders in reading, spelling, math, and written expression. ¶16. The district's proposed IEP did not offer an program reasonably calculated to allow ██████. to make progress appropriate in light of her circumstances.

Whether the student required extended school year (ESY) services for summer 2018, 2019, and 2020 and if so, whether the district failed to provide ESY:

There was no evidence offered on this issue, except as to the ██████N. The evidence shows that ██████. attended the school's ESY program in summer 2019. ¶ 29. She made progress in the summer program, which led to the parents placing her in the school year program in the fall. ¶ 30. The district has never offered ESY for ██████.

Whether the district failed to propose a placement/program for the student that included sufficient and appropriate academic instruction, including a private therapeutic school and/or structured language intervention programs to explicitly address the student's phonological, decoding, and encoding deficits:

The district's proposed IEP is for other health impairment (OHI), not a specific learning disability and/or dyslexia. The district's position that the student "does not ... meet the eligibility criteria for a specific learning disability" is contradicted by the evidence. Jt. Ex. 28, p. 198. The evidence shows that Dr. T.'s diagnosed [REDACTED] as having dyslexia – a specific learning disorder – in fall 2018 after an extensive evaluation.

¶ 15. The district proposed 45 minutes/day of specialized instruction in reading using a Wilson program, 400 minutes/month of writing support, 20 minutes/day of specialized math instruction, and 30 minutes/week of social work services. *Id.*, p. 218. The district's proposed program is based on a significant change in the student's eligibility from dyslexia/specific learning disability to OHI and thus would not meet her educational needs.

Dr. T. made educational recommendations to address [REDACTED]'s dyslexia and to help "close the gap." ¶ 17. Her recommendations follow the mandate in *Andrew F.*, that a student's educational program must be reasonably calculated to allow the student to make progress appropriate in light of the child's circumstances. *Andrew F.*, 137 S. Ct. 988 (2017).

Whether the above-alleged violations denied the student a free appropriate public education (FAPE):

The IDEA defines a free appropriate public education (FAPE) as special education and related services provided at public expense and in conformity with a student's IEP. 20 U.S.C. §1401(9). A district must meet both the procedural and substantive requirements of the IDEA to provide a FAPE. As shown above, the district has not done so in this case and thus has not provided [REDACTED] with a FAPE.

A hearing officer may order tuition reimbursement for a unilateral

placement when a district's proposed IEP is inappropriate and the private placement chosen by the parents is proper. 20 USC § 1412(a)(10)(C)(iii)(I) 34 CFR § 300.148(d)(1). *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 20 IDELR 532 (1993). Reimbursement may be limited or denied if the parents did not inform district at most recent IEP meeting they were rejecting district's proposed placement and state their concerns and intent to enroll at private school at public expense or did not give written notice 10 business days prior to removal of the child from the district. 20 USC § 1412(a)(10)(C)(iii)(1)(aa), (bb); *Burlington v. Department of Education*, 471 U.S. 359, 374 (1985); *Florence County School District Four v. Carter*, 510 U.S. 7, 16 (1993). The evidence shows that the parents provided a proper, timely letter informing the district that they were placing their daughter at [REDACTED] N. Parents' Ex. 11.

Whether the [REDACTED] School is an appropriate placement for the student and her least restrictive environment.

The undersigned has found that the district did not offer a FAPE to the student. The question, then, is whether the parents' unilateral placement was proper. The parents must show "that the placement provides educational instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from instruction." *C.B. v. Garden Grove Unified Sch. Dist.*, 635 F.3d 356, 365 (2d Cir. 2011). The evidence clearly shows that [REDACTED] has a specific learning disability, dyslexia, and that specific instruction is necessary in order for her to make educational progress.. The LRE requirement is not a consideration in determining whether the private placement is proper under the IDEA. *Bd. of Educ. of Murphysboro Community Unit Sch. Dist.*, 41 F.3d 1162 (7th Cir. 1994).

As shown in the foregoing section, the findings on progress are mixed. [REDACTED]'s scores on testing within a subject vary slightly: RIT 51st to 52ndile and 203-215 in math this year and 181-190 last year, which supports a conclusion that she is holding her own and not regressing. She has been "more dysregulated," which is likely related to events totally outside the control of the student or school. Ms. M.M.'s reasoning that

COVID closures and distance learning have impacted [REDACTED]'s availability for learning are not only plausible in these unique circumstances but also likely. Importantly, no evidence has been offered to show otherwise. Based on the foregoing, the evidence shows that [REDACTED]'s needs are being met at [REDACTED]N and that it is an appropriate placement for this student.

Compensatory education is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violation of the IDEA." *Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005). A hearing officer has authority to award compensatory education. *Letter to Riffel*, 34 IDELR 292 (OSEP). The Seventh Circuit has not ruled on whether the qualitative or quantitative standard should be used to calculate such an award. The parents have requested that the district fund an additional year at [REDACTED]N, including ESY 2021, for the student. They also have requested reimbursement for services they provided to the student during the time that the district did not provide her with a FAPE. Based on the evidence in this case, the undersigned finds the parents' request reasonable and grants their request. The parents' table of expenses is attached to this Decision and Order and incorporated herein.

ORDER

1. The district shall place [REDACTED] at [REDACTED]N and assume full financial responsibility for all expenses associated with that placement, including tuition, transportation and ESY services from the date of this decision until the end of the 2020-21 school year, including ESY for summer 2021.
2. The district shall revise the student's IEP to reflect placement at [REDACTED]N and incorporate her educational program, services, accommodations, etc. therein.
3. The district shall reimburse the parents for all costs associated with [REDACTED]'s placement at [REDACTED]N for Summer 2019, the 2019-20 school year, and the 2020-21 school year through the date that the district assumes prospective responsibility for placement.

4. The district shall provide compensatory education in the form of one additional year at ██████N, including ESY, at district expense to account for its failure to provide the student a FAPE in school years 2017-18 and 2018-19.
5. The district shall reimburse the parents for private reading tutoring, neuropsychological evaluations, social work and occupational services and transportation costs for ██████. to attend ██████N. The parents entered a table of expenses with their closing argument, and that document is accepted as their specific requests and incorporated into this Decision.

Within forty-five (45) days of receipt of this Order, School District shall submit proof of compliance to:

Illinois State Board of Education
Program Compliance Division
100 North First Street
Springfield, Illinois 62777-0001

RIGHT TO REQUEST CLARIFICATION

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(ies) and the Illinois State Board of Education. After a decision is issued, the hearing officer may not make substantive changes to the decision. The right to request such 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.

RIGHT TO FILE CIVIL ACTION

This decision is binding on the parties unless a civil action is timely commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-

8.02a(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

Date: December 2, 2020

[REDACTED]

Mary Schwartz
Due Process Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Decision and Order was sent by electronic mail and U.S. mail directed to:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Andrew Eulass
Due Process Coordinator
Illinois State Board of Education
100 North First Street
Springfield, Illinois 62777-0001

On December 2, 2020.

[REDACTED]

Mary Schwartz
Impartial Hearing Officer