

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

STUDENT¹,

Student,

Case No: 2021-DP-0053

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

██████████ SD ██████,

School District.

FINAL DETERMINATION AND ORDER

JURISDICTION

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

BACKGROUND

The Student is a 9-year-old, female who is a 4th grade student at a private therapeutic day school. She qualifies for special education services under the disability categories of Autism Spectrum Disorder (ASD) and Other Health Impairment (OHI) pursuant to an eligibility meeting held on August 14, 2020. The Student previously qualified for services under the disability category of Other Health Impairment (OHI) pursuant to an eligibility and IEP meeting held on May 17, 2019. The Student had a 504 Plan prior to that time due to her Attention Deficit Hyper-Activity (ADHD) diagnosis. The Student struggles with focus, due to her ADHD diagnosis,

¹ Personal identification information is provided in Appendix A.

receptive language, including reading and math comprehension, and anxiety related to her ASD diagnosis. The Student was removed from the District school by Parent on January 21, 2020. As a result of the eligibility meeting held on August 14, 2020 and the IEP meeting held on December 12, 2020, due to the Student's significant amount of time outside of the general education environment, the Student's deficits in the areas of attention and focus, receptive language, and anxiety, a therapeutic day school placement was recommended by the IEP team which included related services in the areas of social work, speech language and consultative occupational therapy services.

Parent maintains the following: 1.) The District did not timely identify the Student as a child with a disability thus denying her FAPE. 2.) The Student's IEPs dated from May 17, 2019 through December 12, 2020 did not appropriately address the Student's deficit areas and thus did not allow the Student to make educational progress and did not provide a placement to meet the Student's needs. 3.) The IEP teams during the period in question failed to consider Parent's outside evaluation reports. 4.) The Parent was denied meaningful participation in the Student's IEP meetings and educational planning during the period June 7, 2019 through December 12, 2020. 5.) The Parent's unilateral placement is appropriate. 6.) The balancing of the equities favors the Parents. (IHO Exhibit #8.)

The Parents filed a due process hearing request on October 29, 2020. (IHO Exhibit #1.) The District filed its response to same on November 11, 2020 along with a Notice of Insufficiency. (IHO Exhibit #4.) On November 12, 2020, IHO Leah Trinkala found the Parents' original DPCN to be insufficient and provided Parents time to file an Amended DPCN. (IHO Exhibit #5.) The Amended DPCN was filed on November 20, 2020. (IHO Exhibit #8.) On December 4, 2020, the District filed its Response to the Amended DPCN. (IHO Exhibit #13.)

On December 14, 2020, the District filed its Motion to Dismiss the Amended DPCN. (IHO Exhibit #20.) IHO Trinkala issued her ruling relating to same on January 6, 2021. (IHO Exhibit #33.) The parties participated in an IEP meeting on December 12, 2020. However, they were unable to resolve the outstanding issues.

As part of IHO Trinkala's January 6, 2021 Order, she made various findings of fact related to a Statute of Limitations issue and ultimately determined that claims arising from October 30, 2018 to the present could be raised and any claims pre-dating the October 30, 2018 date are time barred. (IHO Exhibit #33.)

Parent was represented by legal counsel from the commencement of this due process proceeding until November 25, 2020, when initial counsel of record withdrew while this matter was pending before IHO Trinkala. (IHO Exhibit # 11, 13.)

Originally, this matter was presided over by IHO Leah Trinkala. This matter was transferred to this Hearing Officer when IHO Trinkala became unavailable on February 2, 2021. (IHO Exhibit #40.) Parent was represented by subsequent legal counsel from February 4, 2021 until April 7, 2021 when counsel withdrew prior to the due process hearing per his client's request. Parent proceeded to hearing self-represented. (IHO Exhibit #41, 61.)

The Prehearing Conference was commenced but not completed on March 3, 2021. A follow up Status Conference was scheduled on March 16th to review and discuss the respective document and witness lists of both parties, the draft timed schedule for witness testimony, and Parents' requested compensatory education. On March 16th the Status Conference could not proceed as scheduled as Parents had not provided their draft timed schedule of witness testimony and proposed compensatory education request as ordered by this Hearing Officer in her Draft Prehearing Report & Order dated and issued on March 4, 2021. (IHO Exhibit # 48, 52.)

An additional Status Conference was scheduled for March 29th at 1:00 p.m. to finalize the Prehearing Conference. Parents provided a compensatory education request that was not responsive to this Hearing Officer's prior requests. The compensatory education package requested academic instruction and related services in multiple areas in undetermined amounts, to extend for an undetermined duration. A discussion of the timed schedule of witness testimony was attempted. However, it could not be completed as Parent and her legal counsel would not remain focused on the task at hand and insisted on attempting to relitigate this Hearing Officer's ruling on the Motion to Compel. Approximately one hour into the Status Conference, Parent invited the Student into the room which was not planned or scheduled. Due to the tone of the conversation and non-productive nature of same, this Hearing Officer terminated the Zoom video conference. At that time, the Parents were directed to provide their draft timed schedule of witness testimony by no later than March 31st at 5:00 p.m. (IHO Exhibit # 55-56.)

April 5, 2021 at 9:00 a.m. was the date and time set for production of the 5-day Hearing Disclosures in the above matter as required by the IDEA and the Illinois School Code. As of April 6, 2021 at 4:30 p.m., this Hearing Officer had not received Parents' final document and witness lists nor had she received hard copies of the documents which Parents intended to introduce at hearing. Mother advised at 9:29 a.m. on April 5th that the hard copy document request was financially too burdensome and same would not be provided in violation of this Hearing Officer's Draft Prehearing Report & Order dated March 4, 2021 and her Final Prehearing Report & Order dated March 31, 2021. Parent and counsel for both parties were well aware of this requirement since the Prehearing Conference was convened on March 3rd. Parents never raised the issue of same being too financially burdensome until 9:29 a.m. on April 5th, twenty-nine (29) minutes after hard copy disclosure documents were scheduled to be received at

this Hearing Officer's office. Subsequently, Parent was provided until 5:00 p.m. on Wednesday, April 7th and then until 4:00 p.m. on Friday, April 9th to deliver hard copies of the documents that Parents intended to introduce at hearing in an attempt by this Hearing Officer to provide Parents with every opportunity to be heard and have their evidence considered at hearing. (IHO Exhibit # 57,63.) At 1:20 p.m. on Friday, April 9th, Mother advised via email that she was "throwing in the towel" and would not be delivering hard copies of any additional documents. (IHO Exhibit #65.)

A final Status Conference/Continuation of the Prehearing Conference was held on April 8th to complete and finalize the timed schedule of witness testimony. (IHO Exhibit #70.)

District counsel requested a continuance of the 45-day deadline on December 14, 2020. Same was granted by IHO Trinkala pursuant to her Order of December 14, 2020 to allow the Parties additional time to participate in mediation. (IHO Exhibit #21.) The Parties jointly requested continuances of the 45-day deadline on the following dates: January 13 & March 4, 2021 to allow additional time for the prehearing conference and the due process hearing to be held. The requested continuances were granted for good cause shown pursuant to IHO Trinkala's Order of January 14, 2021 and this Hearing Officer's order dated March 4, 2021. (IHO Exhibit #35, 48.) The decision due date is set for April 30, 2021. (IHO Exhibit #48.)

The Parents opted for a closed hearing. The Due Process Hearing was held on April 12-16, 2021. Parent represented herself *Pro Se*. Ms. Katie Ilijic and Ms. Hazel Koshy, Assistants General Counsel of the Board of Education of the City of Chicago represented the District. The parties presented their individual witnesses and several joint witnesses.² The Parent presented the following Exhibits (PE): #1 which was admitted into evidence. The District presented the

² Witnesses presented by both parties are identified in Appendix A.

following Exhibits (SD): # 1, 4, 8-10, 14-16, 20, 25, 28, 30, 33, 36-37, 39-40, 46, 47, 49, 51-52, 56-57, 59, 62-65, 67-68, 70-72, 74, 77, 80, 83, 84, 99, 101-103, 105-108, 114, 116-118, 122, 131-133, 139-142, 145 which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-70. Both parties electronically submitted oral closing statements, a written outline thereof, and any citations to case law relied upon.

ISSUES

(a) Whether the District's June 7, 2019, January 28, February 7, June 1, and December 12, 2020 IEPs provided the Student with specially designed instruction, accommodations/modifications, related services, and a placement reasonably calculated to enable the Student to receive educational benefit and provide a FAPE. Specifically, as follows:

- (1) Whether the District violated its Child Find obligation when the Student was not found eligible for special education services from October 30, 2018 to May 17, 2019.
- (2) Whether the Student's IEPs at issue provided her with appropriate specialized instruction to address her ASD; ADHD; anxiety; expressive and receptive language disorder; pragmatic language difficulties; learning disabilities in reading – phonics and comprehension, verbal comprehension, written expression, and mathematics; working memory deficits; difficulty with social interactions, self-regulation, and self-advocacy and thus were reasonably calculated to enable the Student to receive educational benefit and provide a FAPE.
- (3) Whether the IEP teams on the dates at issue above considered the evaluations of outside providers in the areas of neuropsychology, speech language, occupational therapy, and social work.

The Parents maintain that the District violated its Child Find obligation when it failed to find the Student eligible for special education and related services from October 30, 2018 to May 17, 2019.

The District maintains that, at all times in question, it met its Child Find obligation to this Student.

The Parents maintain that the District failed to provide the Student with specially designed instruction, accommodations/modifications, related services, and a placement reasonably calculated to enable the Student to receive educational benefit as in paragraph (2) above thus denying her a FAPE.

The District maintains that the IEPs at issue provided the Student with specially designed instruction, accommodations/modifications, related services, and a placement reasonably calculated to enable the Student to receive educational benefit thus providing her with a FAPE.

The Parents maintain that the IEP teams on the dates at issue failed to consider the evaluations of outside providers procured by Parents in the areas of neuropsychology, speech language, occupational therapy, and social work, thus denying FAPE.

The District maintains that the IEP teams on the above dates at issue considered the evaluations of outside providers procured by Parents in the areas of neuropsychology, speech language, occupational therapy, and social work and provided the Student a FAPE.

(b) Whether the Parent's right to meaningfully participate in the Student's IEP meetings on June 7, 2019, January 28, February 7, and December 12, 2020 was denied when the District refused to record the above IEP meetings and instead provided only a note taker to Parent for the December 12, 2020 IEP meeting. Parent confirms that the June 2020 IEP meeting was recorded.

Parent alleges that her ADHD diagnosis requires audio recordings of proceedings in order to allow her to meaningfully participate in IEP meetings and that the District's provision of a note taker was insufficient. It is Parent's position that this procedural violation resulted in a substantive violation as the Student was denied of education benefit as a result thereof.

The District maintains that at all times in question, the Parent was provided with a note taker which allowed her to meaningfully participate in the Student's IEP meetings and therefore, no procedural violation was committed. In the alternative, the District argues that, in the event this IHO finds that a procedural violation was committed, it did not result in a substantive denial of educational benefit to the Student.

(c) Whether Parent's unilateral placement of the Student at TDS, with related services provided by outside medical providers, provides educational instruction specifically designed to meet the unique needs of the Student, supported by such services as are necessary to permit the Student to benefit from the instruction.

Parents maintain that the unilateral placement provides educational instruction specifically designed to meet the unique needs of the Student, supported by such services as are necessary to permit the Student to benefit from the instruction.

The District maintains that Parents' unilateral placement is inappropriate as the Student did not require a private therapeutic day school to meet her unique educational needs until December 12, 2020. The District further maintains that the general education setting, with removal for not more than 25% of the school day, with self-contained special education programming for mathematics and social work, special education

services in the general education setting for Language Arts/English and independent functioning, was the appropriate setting in which this Student's unique educational needs could be met until December 12, 2020. This setting was the neighborhood general education school or DE.

(d) Whether the balancing of the equities favor the Parent or District considering the following factors: (1) whether Parent provided the District with timely notice of rejection of the proposed placement, including Parent's concerns and intent to enroll the Student in a private therapeutic day school at public expense; (2) whether, prior to the removal, the Parent made the Student available to the District for evaluation; (3) whether the Parent's actions were unreasonable; (4) whether the cost of the private placement is unreasonable; and (5) whether there was a lack of parental cooperation with the District.

Parents allege that the balancing of the equities favors the Parents therefore entitling Parents to the requested relief of tuition reimbursement, prospective payment of tuition at a private therapeutic day school, specifically TDS and extended school year services for the 2020-2021 school year.

The District maintains that the balancing of the equities favors the District due to lack of timely notice of rejection of the proposed placement, lack of parental cooperation with the District, failure to make the Student available to the District for evaluation, and unreasonableness of the Parent's actions.

Parents request the following relief:

- a. Placement of the Student at a private therapeutic day school, specifically TDS, with appropriate transportation for the 2020-2021 school year, including ESY;
- b. Order tuition reimbursement and transportation reimbursement for the Student to attend TDS for the 2020-2021 school year through the date of this hearing;
- c. Order reimbursement to Parents and Parents' insurance carrier for services provided to the Student for the 2020-2021 school year.
- d. Provide compensatory education, using the qualitative analysis, as follows: 25 hours per week of ABA therapy; 90 minutes per week of speech therapy; 90 minutes per week of occupational therapy; 90 minutes per week of social work services; and 1:1 academic support.

FINDINGS OF FACT

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

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

Child Find

1. The Student is a 9-year old female who is currently a 4th grade student at a private therapeutic day school. She qualifies for special education services under the disability categories of Autism Spectrum Disorder (ASD) due to her autism diagnosis and Other Health Impairment due to her Attention Deficit Hyperactivity Disorder (ADHD) diagnosis. She struggles with focus, receptive language, including reading and math comprehension, and anxiety. (Testimony of Mother, Dr. B³, Dr. V⁴, PSY1⁵, PSY2⁶; SD #4, 15, 70, 83.)

2. The Student was enrolled in the District commencing with early intervention services and kindergarten thereafter. She attended a district elementary school until Mother submitted a request for homebound services in January 2020. (Testimony of Mother, CM1⁷; SD # 15, 34, 41.)

3. The Student has not attended a district school since Mother removed her for homebound services on January 21, 2020. The Student received homebound services until the COVID 19 pandemic caused the Illinois governor to close schools on March 17, 2020. The District

³ Dr. B is a licensed clinical psychologist. She is employed by the University of Illinois – Chicago. She currently treats the Student for anxiety. (Testimony of Dr. B.)

⁴ Dr. V is a licensed clinical psychologist. She holds a PsyD and specialized in ASD. (Testimony of Dr. V.)

⁵ PSY1 is a licensed school psychologist and is employed by the District. She has been so employed for over twenty-four years. She is qualified to make educational diagnoses of ASD. (Testimony of PSY1; SD #116.)

⁶ PSY2 is a licensed school psychologist and is employed by the District. She has been so employed for fourteen years. (Testimony of PSY2; SD# 105.)

⁷ CM1 is the Case Manager at DE. She holds a Professional Educator License including LBS1, ESL, Reading Specialist, and Special Education endorsements. She has been employed by the District for over twenty years. (Testimony of CM1; SD# 103.)

commenced remote learning in April 2020. (Testimony of CM1, GE2⁸, SPED2⁹; SD# 34, 41, 52.)

4. The Student was diagnosed by an outside provider with ADHD in September 2018, at the start of her second-grade school year. In October 2018, Mother requested a full case study evaluation. The District completed a referral for same. However, an evaluation for special education services was not warranted at that time as the Student was functioning in the academic setting, was timely completing her homework, and her academic performance was within the range of her second-grade peers. However, a 504 Plan was initiated and implemented. It contained various accommodations to address the Student's focus difficulty. The Student was taking medication for the ADHD which significantly improved her functioning. Mother agreed to the 504 Plan. (Testimony of Father, CM1, GE1¹⁰; SD#1, 4.)

5. At the beginning of her second-grade school year, the Student was reading below grade level. However, she made progress during the school year and was academically on par with her second-grade peers in all subject areas at the end of the school year. Her second-grade teacher provided differentiated instruction and accommodations including verbal and written prompts and seating close to the teacher to meet the Student's needs. The Student shared with and interacted socially with her peers and was able to ask for assistance when she did not understand something. Her social and emotional behavior was that expected of a second-grade student and

⁸ GE2 was the Student's third grade general education teacher at DE. She holds a Master's Degree in Education with ESL and Bilingual endorsements. She is licensed to teach in the State of Illinois grades K through 9. She has been employed by the District for over twenty-five years. (Testimony of GE2.)

⁹ SPED2 was the Student's third grade special education teacher at DE. He holds a Professional Educators License with an endorsement in special education. He has been employed by the District for eight years. (Testimony of SPED2; SD# 142.)

¹⁰ GE1 was the Student's second grade general education teacher at DE. She holds Type 3 and Type 10 Professional Educator Licenses in Illinois. She has been employed by the District for over twenty-six years. (Testimony of GE1; SD# 107.)

there were no behavioral issues or concerns in the educational setting. (Testimony of CM1, GE1, SPED1¹¹, PSY1; SD #14-15, 20.)

6. During the 2018-2019 school year, Mother obtained an outside neuropsychological evaluation of the Student which was shared with the District. Based upon same, Mother requested a full initial evaluation of the Student. While the Student was performing at grade level in reading and math per assessments and report card grades, the District agreed that a full initial evaluation was warranted given that the outside evaluation identified phonemic decoding delays indicating that phonological processing was impacting the Student's reading development. (Testimony of CM1, GE1, SPED1, PSY1; SD #4.)

7. An assessment planning meeting was held. District assessments in the domains of health, social/emotional status, general intelligence, academic performance, and communication status were approved and completed. The Student was found eligible for special education services pursuant to an eligibility meeting on May 17, 2019 under the disability category of Other Health Impairment. (Testimony of CM1, GE1, SPED1, SLP1¹², SW1¹³, PSY1; SD #8-10, 14-15, 16.)

8. At the time of the May 17, 2019 assessments and eligibility meeting, there was no basis for an educational diagnosis of autism spectrum disorder (ASD) for this Student. There were no concerns expressed by Parents or teachers that would lead to a suspected ASD educational diagnosis. The assessments performed did not provide any information which would warrant further testing for ASD and the reports of outside evaluators obtained by Parents did not provide

¹¹ SPED1 is an Illinois licensed special education teacher. She also holds an LBS1 endorsement. She was the special education teacher assigned to write the Student's initial IEP. She has been employed by the District for seven years. (Testimony of SPED1; SD# 101.)

¹² SLP1 is a licensed Speech Language Pathologist. She has been employed by the District in that capacity for six years. (Testimony of SLP1; SD# 108.)

¹³ SW1 is the School Social Worker. She is a Licensed Clinical Social Worker (LCSW). She has been employed by the District for over three years. (Testimony of SW1; SD# 118.)

any indication that ASD was present or that testing for same was warranted. (Testimony of PSY1; SD # 4, 15-16.)

Individualized Education Programs (IEPs)

9. An IEP was developed to address the Student's focus and attention to task and to support her reading skills and development in the areas of phonics, word analysis and to provide research-based reading interventions. The IEP also provided various classroom accommodations including checks for understanding, preferential seating, extended time for homework completion, and testing accommodations to minimize distractions. Indirect nursing and social work services were also provided. Placement was the general education setting with direct special education services in that setting. Mother was present and participated in the IEP meeting and agreed with the contents of the IEP. This was undisputed by Mother at hearing. (Testimony of CM1, GE1, SPED1, SW1, Mother; SD#20.)

10. During the 2018-2019 school year, the case manager, general education teacher, special education teacher all communicated with Mother frequently regarding the Student and her educational progress and functioning. (Testimony of CM1, GE1, SPED1.)

11. The testimony of CM1, CM2, GE1, GE2, DR¹⁴, SPED1, SPED2, PSY1, PSY2, SLP1, SLP2¹⁵, SW2¹⁶ was undisputed by Parents at hearing. (Testimony of Mother, Father.)

12. At the beginning of the 2019-2020 school year, the Student's third-grade school year, the Student was functioning at grade level academically in reading and math. She was quiet but was able to advocate for herself and progressed in that area as she gained confidence. GE2 provided

¹⁴ DR is the District Representative. He holds Master's Degrees in School Counseling and Educational Leadership. He has been employed by the District for twenty-one years. (Testimony of DR; SD# 114.)

¹⁵ SLP2 is a licensed Speech Language Pathologist. He has been so employed by the District for six years. (Testimony of SLP2; SD# 102.)

¹⁶ SW2 is a Licensed Clinical Social Worker (LCSW). He has been employed by the District as a School Social Worker for nine years. (Testimony of SW2; SD# 106.)

praise and compliments which further bolstered the Student's confidence and ability to self-advocate. (Testimony of GE2, SPED2; SD #33.)

13. During mid-year of third grade, the Student began having difficulty with math. As the skills and concepts were becoming more difficult, the Student was having some difficulty. Parents reported struggles with math homework. The following supports were provided which allowed the Student to respond accurately and perform in class: small group setting, close proximity to the teacher, partnering with a peer buddy, repeat directions, one on one support with the teacher, anchor charts, manipulatives, and a notebook to take notes. (Testimony of GE2, SPED2.)

14. During the Fall of 2019, the Student was often late to school which resulted in her missing minutes with her special education teacher. The Student was often at least 15 minutes late to school and would miss review of math and vocabulary. (Testimony of SPED2, GE2.)

15. Due to concerns with math and Parent reports of math homework struggles, an IEP meeting was scheduled for December 19, 2019. At that time, Mother wanted the Student to attend the District school for a partial school day and then to be educated at home with a private tutor for math. The IEP team did not agree with this so Mother left the December 2019 IEP meeting before it could be completed. The meeting was subsequently reconvened on January 28, 2020. At that time, revisions to the Student's IEP were made to support the Student during her third-grade school year, the 2019-2020 school year. (Testimony of CM1, DR, SPED2, GE2, PSY1; SD #33.)

16. At the January 28, 2020 IEP meeting, goals were added to the Student's IEP in the areas of English/language arts, math, and social work. Accommodations were added for math and testing. Direct social work services were added to provide the Student with emotional support

due to frustration she was experiencing with math. Placement was the general education setting with pull out services for overall 1% removal from that setting. (Testimony of CM1, DR, SPED2, GE2; SD# 33.)

17. The District was unable to implement the January 28, 2020 IEP in the school setting as Mother removed the Student from the District elementary school and requested homebound services. (Testimony of CM1, DR, GE2, SPED2; SD#28, 34, 39, 41.)

18. The IEP team reconvened on February 7, 2020 to revise the Student's IEP for homebound services. That IEP provided for 100 minutes per week of direct instruction to the Student in both math and language arts. (Testimony of CM1, SPED2, GE2, DR; SD #36.)

19. The District approved homebound services for the Student from February 3, 2020 through April 3, 2020. However, the COVID 19 pandemic caused the Illinois governor the close schools on March 17, 2020 and remote instruction began in early April 2020. (Testimony of CM1, SPED2, GE2; SD #36.)

20. Commencing on February 27, 2020, the District sought to further evaluate the Student in order to prepare for her return to a District school. The District sought to assess the Student in the areas of health, social/emotional status, academic performance, and communication status. However, Mother refused to provide consent for same without the District's agreement to her parentally-imposed conditions. Mother continued to refuse consent until June 21, 2020. (Testimony of CM1, DR; SD # 40, 59.)

21. Homebound services were provided to the Student from February 3, 2020 to March 17, 2020. Remote instruction began in April 2020 which was available to the Student. The Student

could participate in whole group and small group co-taught instruction and one on one sessions with her special education teacher. (Testimony of Tutor¹⁷, HB1¹⁸, HB2¹⁹, GE2, SPED2.)

22. During homebound instruction, the Student was reading at grade level and was in 3rd grade. (Testimony of HB2.)

23. Homebound instruction ended when the District moved to remote learning in April 2020 due to the COVID 19 pandemic. A remote learning plan was created for the Student. The Student attended weekly one on one sessions with her special education teacher during remote learning. However, she attended only one co-taught whole group session during remote learning. (Testimony of SPED2, GE2; SD#52.)

24. The Student did not participate in any other remote learning. (Testimony of DR, SPED2, GE2.)

25. An IEP meeting was held on June 1, 2020 the purpose of which was the Student's annual IEP review. The meeting lasted six hours and Parents invited outside providers Dr. V, Dr. B, SLP-P, Tutor and the Student's psychiatrist to attend. Prior to this meeting the Student had received an outside diagnosis of ASD by Dr. V. (Testimony of Dr. V, Dr. B, Tutor, SLP-P²⁰, DR, CM1, SPED2, GE2; SD #51.)

26. At the June 1, 2020 IEP meeting, Parents' outside providers discussed their reports and findings with the IEP team. The Student's IEP was revised to provide for direct special education services in a separate class in the areas of social work and mathematics; direct services

¹⁷ Tutor is a general education teacher employed by the District. She has been licensed to teach in Illinois since 2015.

¹⁸ HB1 is a licensed special education teacher and has been employed by the District for seven years. She holds Type 4 and LBS1 endorsements. (Testimony of HB1; SD# 145.)

¹⁹ HB2 holds a Master's Degree in Special Education and a Wilson certification. She has been employed by the District for fourteen years as a special education teacher and case manager. (Testimony of HB2.)

²⁰ SLP-P is a Speech Language Pathologist. He holds a Master of Science Degree in Communication Disorders. He has worked as an independent Speech Language Pathologist in Illinois since 2019.

in the general education setting for independent functioning and reading/language arts; one on one paraprofessional support. Extended School Year (ESY) services were also added in the areas of English Language Arts, mathematics, social/emotional. Placement was in the general education setting with 23% removal from same for direct special education instruction and services. (Testimony of CM1, DR, SPED2, GE2, Dr. V, Dr. B; SD# 51.)

27. The June 1, 2020 IEP team considered Parent concerns related to the Student's academics, anxiety, and attention to task, and the recommendations of Parents' outside providers. Parent and the IEP team agreed that this IEP met the Student's needs and identified deficit areas. This was uncontroverted by Parents at hearing. (Testimony of Dr. V, Dr. B, GE2, SPED2, CM1, DR, Mother, Father; SD# 51.)

28. On June 1, 2020, a referral was created to consider the outside evaluation report that included an Autism (ASD) diagnosis, to consider a possible change in eligibility category, and to re-evaluate the Student. (Testimony of DR, CM1; SD#56.)

29. An Assessment Plan was created to re-evaluate the Student in the areas of health, hearing, social/emotional status, academic performance, communication status, and motor abilities in light of her ASD diagnosis. (Testimony of DR, CM1; SD#59.)

30. On June 26, 2020, Mother notified the District of her intent to unilaterally place the Student at a private therapeutic day school. However, Mother refused to provide the District with a definitive answer regarding whether or not the Student would return to a District school for the 2020-2021 school year. (Testimony of Mother, DR, CM2²¹; SD# 62-63.)

31. Re-evaluation of the Student was undertaken by the District during the Summer of 2020.

The following reports of private providers were reviewed and considered by SLP2: report of

²¹ CM2 is a special education teacher and case manager. He has been employed by the District for over twenty-four years. (Testimony of CM2; SD# 99.)

SLP-P, report of Dr. V, and a report provided by the Student's current outside speech language pathologist. The Student was found to have a mild language disorder characterized by difficulties following verbal directions, difficulties understanding spoken language at the paragraph level, and deficits in her knowledge of word relationships. The Student's language disorder is related to her ASD. This finding was consistent with that of Parent's outside provider, SLP-P, and the Student's current outside speech language provider. (Testimony of SLP2, SLP-P; SD#65, 68.)

32. In his re-evaluation of the Student, SW2 reviewed prior records provided by Parent and the District and Dr. V's report. He interviewed Parent, Student, the Student's current teacher at TDS and her third-grade teacher, GE2. Direct and indirect social work services and a social work goal were recommended to build coping strategies for anxiety and to increase self-esteem and confidence in the Student's academics and personal attributes. The Student's anxiety is related to her ASD and ADHD diagnoses. (Testimony of SW2, PSY2; SD# 71.)

33. The Student was diagnosed with ASD, Level 1 (with accompanying receptive language impairment and without intellectual impairment), ADHD, Combined Type, and Generalized Anxiety Disorder. (Testimony of PSY2; SD# 49, 70.)

34. An Eligibility meeting was held on August 14, 2020, at which time the Student was found eligible for special education services under the disability categories of Autism Spectrum Disorder (ASD) and Other Health Impairment (OHI) due to her ADHD diagnosis. (Testimony of DR, PSY2, SW2, SLP2; SD#74.)

35. No evidence was presented at hearing to support Mother's contention that the Student has a specific learning disability, a cognitive disability or an emotional disability. (Testimony of SW2, PSY2; SD# 70, 74.)

36. The District attempted to convene IEP meetings twice in October 2020. However, both meetings were cancelled by Mother or her attorney. (Testimony of DR; SD 77.)

37. An IEP meeting was held on December 12, 2020. Academic goals were provided in the areas of reading/language arts and math to target reading comprehension, oral expression, receptive language, math word problems. Social emotional and functional goals were provided to target coping skills for challenging scenarios, behavioral rigidity (associated with ASD), coping with transitions and social situations. Academic goals were included for science and social studies targeting understanding science content vocabulary and content information and vocabulary in history or social science. Speech language related services were provided. Indirect services were provided in the areas of speech language, social/emotional, independent functioning, and health. Accommodations and modifications were provided in the areas of speech language, English language arts, math, science, social studies, social/emotional, independent functioning, health/medical, and testing/assessments. (Testimony of CM2, PSY2, SLP2, SW2; SD# 70, 83.)

38. The IEP team reviewed at least ten (10) outside educational evaluations and treatment plans of Parent's outside providers at the December 12, 2020 IEP meeting. (Testimony of CM2, PSY2; SD #83.)

39. A therapeutic day school setting was recommended as the Student requires a small, structured setting and a lower student to teacher ratio in order to meet her needs. A therapeutic day school setting was further recommended due to the extended period of time in which the Student had been out of the District school and Parent reports of limited social interaction for the Student, and struggles related to same, due to the COVID 19 pandemic. (Testimony of CM2, PSY2; SD# 83.)

40. After said meeting, when a therapeutic day school placement was determined, Mother refused to sign consent for the District to send referrals to potential schools until January 3, 2021. She then promptly revoked that consent on January 5, 2021. (Testimony of DR, CM2; SD #84, 122.)

41. Mother rejected the District's proposed therapeutic day schools because they were either not in the City of Chicago or had a religious affiliation. She did not provide any reasons related to the academic programming and related service offerings by the schools as the basis for her rejection of them. (Testimony of Mother.)

Parental Participation at IEP Meetings

42. Mother attended the June 7, 2019 IEP meeting. The December 19, 2019 IEP meeting was convened on that date and reconvened on January 28, 2020 and Mother and Father attended both meetings, although Mother left the December 19, 2019 meeting prior to its conclusion. Mother and Father attended the February 7, 2020 IEP meeting. Mother and Father attended the December 12, 2020 IEP meeting via phone. Notes were taken at the December 12, 2020 IEP meeting, a copy of which was provided to Parents. (Testimony of CM1, CM2, DR; SD#20, 33, 35, 36, 51-52, 77, 80, 83.)

43. At the January 28, 2020 IEP meeting, Parent advised the team that she had ADHD and requested to record the meeting. The IEP team did not agree to being recorded. However, both parents were provided with a copy of the draft IEP. (Testimony of CM1, DR; SD#33.)

44. Mother was present at all of the Student's IEP meetings from June 7, 2019 through December 12, 2020. She actively participated in all of said meetings including requesting adjustments to service recommendations and requesting additional IEP goals. (Testimony of CM1, DR, CM2, SPED2, SLP2, OT; SD #20, 33, 35-36, 51-52, 77, 80, 83.)

45. The Student's teachers, evaluators, and service providers were all responsive to Mother's questions and concerns during the time period in question. This was uncontroverted by Mother and Father at hearing. (Testimony of CM1, CM2, DR, GE2, SPED2, SLP2, OT, PSY1, PSY2, Mother and Father.)

46. DR attended six (6) IEP meetings and spent well over thirty (30) hours explaining procedures to Mother. Mother was an active participant at all meetings he attended. She asked many questions and provided substantial input. Recording the IEP meetings did not impact Mother's ability to participate. This was uncontroverted by Mother and Father at hearing. (Testimony of DR, Mother, Father.)

47. The District attempted to convene IEP meetings twice in October 2020. However, both meetings were cancelled by Mother or her attorney. (Testimony of DR; SD 77.)

48. The December 12, 2020 IEP meeting was rescheduled several times to accommodate Mother's and Father's schedule. Three days prior to each rescheduled date, Parents were provided with copies of the draft IEP document. This occurred at least twice. In addition, notes of the December 12, 2020 meeting were taken and provided to Mother and Father. (Testimony of CM2, DR; SD #83.)

49. No testimony or documentary evidence was presented at hearing to support Mother's contention that she was denied meaningful participation at the Student's IEP meetings or that her ADHD diagnosis required audio recordings in order for her to participate in same. (Testimony of Mother, Father, DR, CM1, CM2, GE2, SPED2, PSY1, PSY2.)

50. No testimony or documentary evidence was presented at hearing reflecting that Mother's alleged lack of meaningful participation at the Student's IEP meetings resulted in a denial of

educational supports and services to the Student. (Testimony of Mother, Father, DR, CM1, CM2, GE2, SPED2, PSY1, PSY2.)

51. Mother's requests for adjustments to service recommendations and additional IEP goals were considered by the IEP team and incorporated into the Student's IEPs. (Testimony of CM1, CM2, DR, PSY1, PSY2; SD# 20, 28, 33, 36, 51, 83.)

52. The Student does not have any specific learning disabilities, expressive language disorder, pragmatic language difficulties, or difficulties with social interactions, self-regulation, and self-advocacy in the school setting. No testimony or documentary evidence was introduced at hearing to support Mother's claim that the Student has any of the above. (Testimony of GE1, GE2, SPED1, SPED2, SLP1, SLP2, PSY1, PSY2, SW1, SW2, OT, CM1, CM2; SD #4, 10, 14-16, 20, 33, 36, 47, 49, 51, 68, 70-72, 74, 83.)

Parents' Proposed Unilateral Placement

53. At TDS, the Student receives small group instruction and then one on one academic instruction delivered by behavioral therapists. (Testimony of DH²².)

54. TDS uses multiple reading and math curriculums. (Testimony of DH.)

55. TDS employs certified teachers but does not employ any certified special education teachers. (Testimony of DH.)

56. TDS uses a combined, medical services integrated with educational services model. No evidence was presented at hearing that this is a researched based model. (Testimony of DH.)

57. Related services provided to the Student are medical services, provided by a separate entity, CTP, billed to Parents and Parents' medical insurance carrier. (Testimony of DH.)

²² DH is the Head of School and Program Director for TDS. She has been so employed for eight years. She holds a Bachelor's Degree in Elementary Education and a Master's Degree in Child Development. She is a credentialed therapist licensed to provide early intervention and therapeutic services. (Testimony of DH.)

58. No testimony or documentary evidence was presented at hearing related to the Student's educational progress at TDS. (Testimony of DH.)

59. DIR Floortime is an intervention provided to the Student as TDS. However, given her age and ability level, it is not an appropriate intervention for this Student. (Testimony of DH, SLP2; SD# 68.)

60. No testimony or documentary evidence was presented at hearing related to the costs of the Student's attendance at TDS. (Testimony of Mother, Father, DH.)

61. No testimony or documentary evidence was presented at hearing related to the costs of Student's related services at CTP. (Testimony of Mother, Father, DH.)

62. No testimony or documentary evidence was presented at hearing to indicate that the Student required a therapeutic day school setting prior to December 12, 2020. (Testimony of CM1, CM2, DR, GE1, GE2, SPED1, SPED2, SW1, SW2, PSY1, PSY2, SLP1, SLP2; SD #20, 33, 36, 51, 83.)

63. TDS and CTP are not ISBE approved facilities. (Testimony of CM2.)

64. No testimony or documentary evidence was presented at hearing related to Parents compensatory education claim. (Testimony of Mother, Father.)

CONCLUSIONS OF LAW

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

Child Find Obligation

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

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

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

Mother maintains in her Amended Due Process Complaint Notice that the District failed to timely identify the Student as a “child with a disability” alleging that the District should have found her eligible at least as early as October 2018. This Hearing Officer finds Mother’s contention to be without merit. The testimony and documentary evidence presented at hearing reveal the following.

At the beginning of the Student’s second grade school year, she was diagnosed by an outside provider with ADHD. Based upon this information and Mother’s request, the District completed a referral for evaluation for special education services. However, the Student was

functioning in the academic setting, was timely completing her homework, and her academic performance was within the range of her second-grade peers. Therefore, a 504 Plan was developed and implemented. The Student was taking medication for ADHD and the testimony was consistent and undisputed, the Student's functioning and focus significantly improved after medication was initiated. Father corroborated District witness testimony on this point. Mother agreed with the 504 plan. (FF#4-5.)

During the 2018-2019 school year, the Student made progress and was academically on par with her peers in all subject areas at the end of the school year. She shared with and socially interacted with her peers, was able to self-advocate, requested assistance when she did not understand directions or class material. Her social and emotional behavior was that expected of a second-grade student and there were no behavioral issues or concerns in the educational setting. (FF #5.) When Mother obtained and provided to the District an outside neuropsychological evaluation of the Student which identified decoding delays which indicated that phonological processing was impacting reading development, the District assessed the Student, undertook and completed evaluations in the areas of health, social/emotional status, general intelligence, academic performance, and communication status; found the Student eligible for special education services on May 17, 2019 and developed an IEP to address the Student's focus and identified reading deficits. (FF# 6-8.) At that time, the uncontroverted testimony and outside neuropsychological report both reflected that the Student was making progress in the academic setting and was functioning on par with her peers in all subject areas. (FF#5.)

The District identified the Student as a student with a disability in October 2018 when she was diagnosed with ADHD. However, at that time, her disability did not adversely impact

her in the educational setting. (FF#4.) Until Mother provided the District with the outside neuropsychological evaluation, the District had no basis to suspect that the Student may be a student with a disability which would adversely impact her in the educational setting, as she was meeting academic expectations in school and was not exhibiting problematic behaviors. (FF# 6-10.) When provided with the outside neuropsychological evaluation, the District acted upon that information, undertaking assessments of the Student in multiple areas, finding her eligible for special education services, and developing an IEP to address her independent functioning and identified deficit in reading. (FF# 6-10.)

Mother takes issue with the fact that the District did not identify the Student as a student with Autism Spectrum Disorder (ASD), alleging that the Student has always had ASD. However, the testimony on this point is clear and uncontroverted. There were no concerns expressed by Parents or teachers that would lead to a suspected ASD educational diagnosis. The assessments performed did not provide any information which would warrant further testing for ASD and the reports of outside evaluators obtained by Parents did not provide any indication that ASD was present or that testing for same was warranted. (FF# 8.) The Student was removed by Parent from the educational setting in late January 2020 and the Student attended very little of the remote learning provided. (FF# 17, 23-24.) It was not until Parent provided the report of outside evaluator, Dr. V. in June 2020, that the District had any reason to suspect that ASD was present or that it might impact the Student in the educational setting. (FF# 8, 28.) When provided with that outside report, the District took action: created a referral to consider the report; created an assessment plan to re-evaluate the Student; re-evaluated the Student; held an eligibility meeting to consider and revise the Student's eligibility category to include ASD; and

created an IEP to address the Student's needs related to same. (FF# 28-37.) This was uncontroverted by Parents at hearing. (FF# 27.)

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

Tuition Reimbursement for Parent's Unilateral Placement

The Parents request relief in the form of tuition reimbursement and prospective funding of Parent's unilateral placement. IDEA provides as follows:

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private . . . elementary school or secondary school without the consent of or referral by the public agency, a court or hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency has not made a free appropriate public education (FAPE) available to the child in a timely manner and that the private placement is appropriate. 34 C.F.R. §300.148(c); *Burlington v. Department of Education of Massachusetts*, 471 U.S. 359 (1985); *Florence County School District Four v. Carter*, 510 U.S. 7 (1993).

In applying what has come to be known as the three-prong *Burlington-Carter* standard, "equitable considerations are relevant in fashioning relief and the courts enjoy 'broad discretion' in so doing." *Burlington* at 374, 369. "Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required." *Carter* at 16.

Free Appropriate Public Education (FAPE)

The first prong of *Burlington-Carter* requires that the hearing officer must determine whether a free and appropriate public education was made available to the child in a timely manner. 34 C.F.R. §300.148(c); *Burlington* at 359; *Carter* at 7. The Individuals with Disabilities Education Act ("IDEA") guarantees children with disabilities the right to a free,

appropriate, public education (“FAPE”). 20 U.S.C. §1412(a)(1). In order to determine whether a school district has provided a FAPE requires the determination of whether the school district complied with the procedural and substantive requirements of IDEA. *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982). As recently clarified by the United States Supreme Court, under the Individuals with Disabilities Education Improvement Act (“IDEA”), a school satisfies its substantive obligation to provide a free appropriate public education by offering a child “an IEP reasonably calculated to enable a child to make progress in light of the child’s circumstances.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.)

In matters alleging a procedural violation, the hearing officer may find that a student did not receive a FAPE only if the procedural inadequacy impeded the student’s right to a FAPE, significantly impeded the parent’s opportunity to participate in the decisions-making process regarding the provision of a FAPE to the parent’s child or caused a deprivation of educational benefit. 20 U.S.C. §1415(f)(3)(E); 34 C.F.R. §300.513(a); *Rowley* at 206-207. In the instant case, Parent alleges the following procedural violations of the IDEA: 1.) Mother was denied an opportunity to meaningfully participate in the Student’s IEP meetings on June 7, 2019, January 28, February 7, and December 12, 2020 when the District refused to record the above IEP meetings and instead provided only a note taker to the Parent for the December 12, 2020 IEP meeting; 2.) The IEP teams on the above dates failed to consider the evaluations of Mother’s outside providers in the areas of neuropsychology, speech language, occupational therapy, and social work. The testimony and documentary evidence presented at hearing reflects the following.

Parental Participation in IEP Meetings

Mother contends that she was denied an opportunity to meaningfully participate in the Student's IEP meetings on June 7, 2019, January 28, February 7, and December 12, 2020 when the District refused to record the above IEP meetings and instead only provided a note taker to Mother for the December 12, 2020 IEP meeting. The IDEA requires that a public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate. 34 C.F.R. §300.322(a). Courts have determined that this includes considering parents' suggestions and, if appropriate, incorporating them into the IEP. *Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6th Cir. 2004). Hearing officers have also found that meaningful parental participation included considering outside evaluations, discussing placement options, and answering parents' questions. *Bd. of Educ. of Waterford-Halfmoon Union Free Sch. Dist.*, IDELR 1092 (SEA NY 1994). The testimony and documentary evidence at hearing reveal the following.

Mother was present and was an active participant in all of the IEP meetings held during the time period in question. Father was present at all of the IEP meetings with the exception of the June 7, 2019 meeting. (FF# 42-43.) IEP meetings were rescheduled multiple times to accommodate Mother and her attorney's requests. (FF# 47-48.) Mother was an active participant at all of the IEP meetings during the time period in question. She provided information, outside evaluation reports, arranged for outside evaluators to attend the meetings. (FF# 44-46.) Mother requested adjustments to service recommendations and requested additional IEP goals. (FF# 44.) Mother asked many questions and provided substantial input at said meetings. District employees spent substantial time attending multiple IEP meetings, answering Mother's questions, and explaining procedures. (FF# 45-46.) Mother's requests were

considered by the IEP team and incorporated into the Student's IEPs where appropriate. (FF# 49-51.) Draft IEPs were provided to Mother and Father in advance of meetings and notes of the December 12, 2020 IEP meeting were memorialized and provided. (FF# 48.) This was uncontroverted by Mother and Father at hearing. (FF# 49-50.) Based upon the testimony and documentary evidence introduced at hearing, this Hearing Officer finds Mother's contention that she was denied meaningful participation to be without merit. At all times in question, the District provided Mother with the opportunity to meaningfully participate in the Student's IEP meetings. Based upon the testimony at hearing, this Hearing Officer finds that the District went above and beyond what was required in order to ensure Mother's participation. No procedural violation of the IDEA was committed.

IEP Team Consideration of Parent's Outside Evaluations

Parent next contends that the District failed to consider the evaluations of Parents' outside providers specifically the neuropsychological, speech language, occupational therapy, and social work evaluations of unspecified dates. The IDEA's implementing regulations state that "[a]s part of an initial evaluation (if appropriate) and as part of any reevaluation ... the IEP Team ... must (1) [r]eview existing evaluation data on the child, including (i) [e]valuations and information provided by the parents of the child ..." 34 C.F.R. §300.305(a). The regulations also state that the review may be conducted "without a meeting." 34 C.F.R. §300.305(b). The testimony and documentary evidence introduced at hearing was overwhelming on this point as follows.

At least ten (10) District witnesses testified at hearing to having reviewed outside neuropsychological evaluation reports, speech language evaluation reports including the evaluation reports of Dr. B and Dr. V. The testimony and documentary evidence presented at

hearing is clear, Parent's outside evaluation reports were reviewed and considered by the IEP team members on all of the dates in question. Many of the recommendations contained within same were incorporated into the Student's IEPs where appropriate and applicable to the educational setting. (FF# 6-8, 15-16, 25-29, 31-34, 37-39.) Mother appears to take issue with the fact that because all of the recommendations of all of the outside providers were not incorporated in full into the Student's IEPs, that they were not considered. However, there is no requirement that the IEP team incorporate, or even accept, the recommendations of outside providers. Based upon the testimony and documentary evidence introduced at hearing, it is clear that the IEP teams on all of the dates in question carefully considered the recommendations of Mother's outside providers. (FF# 6-8, 15-16, 25-29, 31-34, 37-39.) This evidence was undisputed by Mother and Father at hearing. Therefore, it is the finding of this Hearing Officer that Parents' claims to the contrary are without merit.

Individualized Education Programs (IEPs)

Parents next contend that the District denied the Student a free and appropriate public education when the Student's IEPs at issue failed to provide her with appropriate specialized instruction to address her ASD; ADHD; anxiety; expressive and receptive language disorder; pragmatic language difficulties; learning disabilities in reading – phonics and comprehension, verbal comprehension, written expression, and mathematics; working memory deficits; difficulty with social interactions, self-regulation, and self-advocacy and thus were not reasonably calculated to enable the Student to receive educational benefit.

As an initial matter, the Student does not have any specific learning disabilities, expressive language disorder, pragmatic language difficulties, or difficulties with social interactions, self-regulation, and self-advocacy in the school setting. No testimony or

documentary evidence was introduced at hearing to support Mother's claim that the Student has any of the above. (FF #52.)

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

The testimony and documentary evidence presented at hearing illustrate that the District, at all times in question, provided the Student with IEPs which were “appropriately ambitious” in light of her unique circumstances, and were reasonably calculated to enable her to make appropriate progress as required by *Andrew F.* During her second-grade school year, the Student made progress in the general education setting and was academically on par with her second-

grade peers in all subject areas at the end of the school year. She shared with and interacted socially with her peers and was able to ask for assistance when she did not understand something. Her social and emotional behavior was that expected of a second-grade student and there were no behavioral issues or concerns in the educational setting. (FF# 5.) In response to parental concerns and an outside evaluation, the District convened eligibility and IEP meetings and created an IEP to address the concerns. Mother agreed with the contents of same. (FF# 6-9.)

At the beginning of the 2019-2020 school year, the Student's third-grade school year, the Student was functioning at grade level academically in reading and math. She was quiet but was able to advocate for herself and progressed in that area as she gained confidence. (FF# 12.) When concerns were raised during third grade, related to math and homework struggles, the District convened an IEP meeting to address the concerns and revised the Student's IEP. (FF# 13-16.) However, when Parent disagreed with the IEP team, she left the December meeting and removed the Student from the District elementary school. (FF# 17.)

The Student's IEP was again revised when Parent submitted a request for homebound services. Before the Student could reintegrate into the District school, Illinois schools were closed by Governor JB Pritzker due to the COVID-19 pandemic. (FF# 18-22.) When remote instruction began in April 2020, the Student was able to join her class in whole group, small group, and one on one instruction sessions with her special education teacher. She attended weekly one on one sessions but only one whole group session. (FF# 23-24.)

In June 2020, a six (6) hour IEP meeting was held. Said meeting included the District IEP team, Mother and Father, and Parents' outside providers. The outside providers shared their reports and recommendations with the school-based team. An IEP was developed that included

services in the general education setting for independent functioning, English/language arts, and pull out services for math and social work. It also provided for one to one paraprofessional support in all core classes. However, after this meeting, the District was unable to implement the IEP as the Student was unilaterally placed at TDS. (FF# 25-28, 30.)

The District initiated a re-evaluation of the Student in light of Parents' outside provider's ASD diagnosis. Evaluations were undertaken during the Summer of 2020 and an eligibility meeting was held in August 2020 to consider and add the disability category of ASD. (FF# 28-29, 31-35.) The District attempted several times to convene an IEP meeting thereafter. However, said meeting did not take place until December 12, 2020 due to Mother and her attorney's repeated cancellation of same. (FF# 36.) At the December 12, 2020 meeting, an IEP meeting was written for removal of the Student from the general education setting and placement at the therapeutic day school. Academic goals were provided in the areas of reading/language arts and math to target reading comprehension, oral expression, receptive language, math word problems. Social emotional and functional goals were provided to target coping skills for challenging scenarios, behavioral rigidity (associated with ASD), coping with transitions and social situations. Academic goals were included for science and social studies targeting understanding science content vocabulary and content information and vocabulary in history or social science. Speech language related services were provided. Indirect services were provided in the areas of speech language, social/emotional, independent functioning, and health. Accommodations and modifications were provided in the areas of speech language, English language arts, math, science, social studies, social/emotional, independent functioning, health/medical, and testing/assessments. (FF# 37-39.)

Neither the Parents nor any of their outside providers offered any evidence that the academic instruction, services and supports outlined in any of the Student's IEPs were not reasonably calculated to enable the Student to make appropriate progress in light of her unique circumstances. The testimony of all District witnesses was consistent and uncontroverted: while in the District school in second and third grade, the Student was making academic progress and was on par academically and socially with her same age peers. (FF# 5, 12.) Based upon the testimony and documentary evidence presented at hearing, it is the finding of this Hearing Officer, that at all times in question, the District provided the Student with thoughtful, considered IEPs that included concerns and input from Parent and all of Parents' outside providers and were "appropriately ambitious" in light of the Student's unique circumstances and were reasonably calculated to enable her to make appropriate progress as required by *Andrew F.*

"The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the IDEA to state and local educational agencies in cooperation with the parents or guardians of the child." *Rowley* at 207. Educators "have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents." *Lachman v. Illinois State Bd. Of Educ.*, 852 F.2d 290, 297 (7th Cir. 1988); *Williams v. Milwaukee Public Schools* (E.D. Wis. 2012). The IDEA contemplates that "an appropriate education is one that occurs in the least restrictive environment." 20 U.S.C. §1412(a)(5); *Beth B. v. Van Clay*, 282 F.3d 493, 498 (7th Cir. 2002); see *Alex R. v. Forrestville Valley Comm. Unit Sch. Dist. #221*, 375 F.3d 603, 618 (7th Cir. 2004.) While it is apparent from Mother's considerable arguments at hearing that she believes the District's IEPs and programming to be insufficient as they are not specifically the programming that she desires and do not include every recommendation of more

than a half dozen outside providers, that is not the legal standard of the IDEA. Educators “have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents.” *Lachman at 297*. In this case, more than a dozen educators employed by the District, most of whom had first-hand knowledge and direct interaction with the Student, overwhelmingly and credibly testified to the needs of the Student and the educational programming and related services required to meet those needs. They further credibly testified that they considered the many reports of Parents’ outside providers and accepted and included many of those recommendations in the Student’s IEPs. (FF# 25-27, 31-32, 38.) Parent’s assertions to the contrary are against the manifest weight of the evidence and are without merit. It is the finding of this Hearing Officer that, at all times in question, the District’s IEPs provided the Student with a free and appropriate public education.

Appropriateness of Parents’ Unilateral Placement

As this Hearing Officer has determined that the District made a free and appropriate public education (FAPE) available to this Student at all times in question and appropriately found her eligible for special education services and supports as of May 17, 2019, there is no need to address the appropriateness of Parent’s unilateral placement. However, in the event that a reviewing court were to disagree with this finding, the second prong of the *Burlington-Carter* inquiry and the appropriateness of Parents’ unilateral placement will be addressed.

The second prong of the *Burlington-Carter* inquiry requires the Parent’s unilateral placement to be appropriate. In determining whether a unilateral placement is appropriate, the relevant inquiry is “whether it is reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.) More specifically, based on a

totality of factors, “[a] unilateral private placement is only appropriate if it provides ‘educational instruction *specifically* designed to meet the *unique* needs of . . . the child [with a disability].” *Bd. of Educ. V. Risen*, 61 IDELR ¶130 (N.D. Ill. 2013); *Jenna R.P. v. City of Chicago Sch. Dist. No. 229*, 3 N.E.3d 927 (Ill. Ct. App. 2013)(both citing the *Rowley* quotation in *Frank G. v. Bd. of Educ.*, 459 F.3d 356, 365 (2d Cir. 2006)). “A unilateral private placement cannot be regarded as ‘proper under the [IDEA]’ when it does not, at a minimum provide some element of special education services in which the public school placement was deficient.” *Jenna R.P.* at 941. The testimony and documentary evidence presented at hearing illustrates the following.

Parent unilaterally placed the Student at a private therapeutic day school in June 2020. However, no evidence was presented at hearing to support the claim that the Student required such a placement prior to the December 12, 2020 IEP meeting. (FF# 30, 62.) Further, “[a] unilateral private placement cannot be regarded as ‘proper under the [IDEA]’ when it does not, at a minimum provide some element of special education services in which the public school placement was deficient.” *Id.* It is the finding of this Hearing Officer that no evidence was presented at hearing showing that the private placement offers “some element of special education services” in which the public school was deficit. (FF# 53-58.) Very little information was provided about TDS. What is known is that it does not employ any special education teachers. (FF# 55.) It does not provide any related services. (FF# 57.) Instruction is provided to the Student by behavioral therapists. (FF# 53.) However, the Student has no documented behavioral difficulties in the educational setting. In fact the evidence introduced at hearing was overwhelmingly to the contrary: In the educational setting the Student was able to appropriately interact with peers, ask questions when she did not understand information, and self-advocate, and no behavioral difficulties were observed or noted. (FF#4, 12-13.) While Parent contends

that the Student requires ABA therapy and DIR Floortime interventions and TDS can provide same, no testimony or documentary evidence was presented at hearing to support this contention. ABA therapy is a behavioral intervention and the Student had no documented or noted behavioral issues in the educational setting. (FF# 4, 12-13.) DIR Floortime is an intervention for students with ASD to develop communication skills. However, it is not an appropriate intervention for this Student due to her age and ability level. (FF# 59.) Based upon the testimony and documentary evidence presented at hearing, it is the finding of this Hearing Officer that Parents' unilateral placement at TDS is not appropriate.

Balancing of the Equities

As this Hearing Officer finds that the District, at all times in question, provided the Student with a FAPE, it is not necessary to undertake a balance of the equities analysis. However, in the event that a reviewing court were to disagree with this finding, the balancing of the equities will be addressed. In a tuition reimbursement case, the final consideration is the balance of the equities. The Hearing Officer must consider the actions of the parents and school district including (1) whether Parent provided the District with timely notice of rejection of the proposed placement, including Parent's concerns and intent to enroll the Student in a private therapeutic day school at public expense; (2) whether, prior to the removal, the Parent made the Student available to the District for evaluation; (3) whether the Parent's actions were unreasonable; (4) whether the cost of the private placement is unreasonable; and (5) whether there was a lack of parental cooperation with the District. *See 34 C.F.R. 300.148(d), Florence County Sch. Dist. Four v. Carter*, 510 U.S. at 16.

With respect to whether Parent provided the District with timely notice of rejection of the proposed placement, including Parent's concerns and intent to enroll the Student in a private

therapeutic day school at public expense, Mother provided notice to the District on June 26, 2020. (FF# 30.) This was after a six (6) hour IEP meeting which included Mother and Father and several of their outside evaluators. At the IEP meeting the District recommended services for the Student in both the general education and pull out settings with support from a dedicated paraprofessional and Parents agreed with the IEP. (FF# 25-27.) Further, the District created an additional referral and developed an assessment plan to re-evaluate the Student in light of an outside ASD diagnosis, although ASD characteristics were not seen by any of the Student's teachers, evaluators, or related service providers when she attended a District school. (FF# 28-29, 8.) After Parent's notice of unilateral placement, Parent refused to provide the District with a definitive answer regarding the Student's return to the District in Fall 2020 for the 2020-2021 school year. (FF# 30.) While it appears that Parent provided timely notice of the unilateral placement for Summer 2020, timely notice was not provided regarding continued removal of the Student for the 2020-2021 school year. Parent continued to engage with the District well into August 2020 in an apparent attempt to obtain concessions to her demands and without ever providing notice of Parent's intentions for the 2020-2021 school year. (FF#30.) Parent did not provide timely notice of the unilateral placement for Fall 2020 and the 2020-2021 school year.

The next prong of the balance of equities analysis is whether, prior to removal, Parent made the Student available to the District for evaluation. Parent did not. The District attempted to obtain consent to evaluate the Student from February through June 21, 2020 after the Student was removed to homebound services by Mother in January 2020. (FF# 20-21.) District personnel credibly testified to countless hours spent answering Mother's questions and attempting to obtain her consent to evaluate, even requesting the assistance of an ISBE monitor to answer questions and assist with same. (FF# 20, 46.) Consent was eventually provided on

June 21, 2020. However the District was unable to evaluate until Summer 2020 and eligibility and IEP meetings were not held until August 2020 and December 12, 2020, respectively. The delay in the IEP meeting was caused by Parent's multiple requests to reschedule said meeting. (FF# 47.) This was all well after notice of unilateral placement of the Student for Summer 2020. (FF# 30.) The testimony and documentary evidence on this point is clear and uncontroverted, Parent refused to make the Student available for the District to evaluate from February to June 21, 2020.

The next consideration is whether the Parent's actions were unreasonable. This can include several factors as follows: whether the Parent acted in good faith, the quality and level of services at the parentally chosen placement, and the adequacy of the parentally chosen placement to address all of the Student's needs. The testimony and documentary evidence is clear, Parent has been obstructive to the process. Parent withheld consent to evaluate the Student from February 2020 through June 21, 2020 while the Student was outside the educational setting through Parent's own design. (FF# 20-24.) Once consent was obtained and evaluations completed, Parent and her attorney cancelled two attempts by the IEP team to hold an IEP meeting in Fall 2020. (FF# 47-48.) No testimony or documentary evidence was presented to support the contention that TDS is an appropriate placement that meets the Student's educational and related service needs. In fact, the limited testimony supports a finding that TDS does not meet the Student's identified needs. (FF# 53-59.) Further, after the December 12, 2020 IEP meeting when the IEP team determined that a therapeutic day school setting was appropriate for this Student, Parent refused consent, consented, then immediately withdrew her consent for the District to provide information related to the Student and her educational needs to several identified schools. (FF# 39-40.) Parent cited only that the schools either were not in the City of

Chicago or had a religious affiliation as her reasons for rejection of same – unrelated to the academic programming and related service offerings of the schools. (FF# 41.) It is the finding of this Hearing Officer that Parent’s actions were unreasonable.

The next factor for consideration is whether the cost of the unilateral placement is reasonable. No testimony or documentary evidence was presented at hearing related to the cost of TDS. TDS is not an ISBE approved facility. (FF# 63.) Related services are provided to the Student by a medical entity, CTP, which is related to TDS. Those costs are billed to Parents and Parents’ medical insurance carrier. (FF# 57, 61.) The dollar amount of those costs is unknown. (FF# 61.) However, based upon this Hearing Officer’s finding that TDS is not an appropriate placement as it does not meet this Student’s unique educational and related service needs, any costs related to same are unreasonable.

The final factor for determination is whether there was a lack of parental cooperation with the District. The testimony and documentary evidence is clear on this point. Parent has not cooperated with the District. Parent removed the Student from the educational setting in late January 2020; refused for approximately four (4) months to consent to evaluation requests by the District; walked out of and cancelled multiple IEP meetings; withheld and then revoked consent for the District to send referrals to possible therapeutic day schools for the Student. (FF# 17-24, 40-41, 46-48.) The District, on the other hand, has been responsive to multiple Parent requests, held multiple IEP meetings, evaluated the Student, re-evaluated the Student, considered all of Parent’s outside provider reports, comments and recommendations, revised multiple IEPs to accommodate Parent concerns and outside provider recommendations. (FF#26-29, 37-39, 45-46, 51.) Further, District personnel spent an extraordinary number of hours attempting to answer Parent questions and explain procedures in an attempt to work collaboratively. (FF# 46.)

Based upon the above, this Hearing Officer finds that the balancing of the equities favors the District. Therefore, in the event a FAPE denial were to be found, denial, or reduction, of any reimbursement award to Parents would be necessary as it relates to the Student's placement at TDS.

Compensatory Education Request

In the Amended Due Process Complaint Notice, Parents request compensatory education to compensate the Student for the denial of a FAPE. As indicated above, it is the finding of this Hearing Officer that, at all times in question, the District provided the Student with a free and appropriate public education. No testimony or documentary evidence was presented at hearing related to Parents' compensatory education claim. (FF# 64.) During these due process proceedings, Parent was ordered to provide a requested compensatory education package by March 10, 2021. As noted in this Hearing Officer's Final Prehearing Report & Order of March 31, 2021, Parent had not submitted that information and nothing was provided by Parents at the time of the 5-day disclosures, or during this Hearing Officer's subsequent attempts to obtain documents from Parents thereafter in preparation for hearing. Compensatory education is meant to be a "replacement of educational services [a] child should have received in the first place." *Reid v. D.C.*, 43 IDELR 32; 401 F.3d 516 (DC Cir. 2005). An award of compensatory education should place the child "in the same position they would have occupied but for the school district's violations of the IDEA." *Id.*; *Petrina W. v. City of Chicago Pub. Sch. Dist.* 299, 53 IDELR 259 (N.D. Ill. 2009). Again, it is the finding of this Hearing Officer that, at all times in question, the District provided the Student with a free and appropriate public education. Therefore, any compensatory education award would be inappropriate. Parents presented no

testimony or documentary evidence at hearing to controvert this finding. Parents' request for compensatory education is hereby denied.

CONCLUSION

Based upon the Findings of Fact and Conclusions of Law, the District timely identified the Student as a Student with a disability and thus met its Child Find obligation. Further, at all times in question, the District provided the Student a free and appropriate public education (FAPE) in the least restrictive environment. Parents' unilateral placement at TDS is not appropriate and the balancing of the equities favors the District.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered: Parents' requested relief is denied in its entirety and the Due Process Complaint Notice and Amended Due Process Complaint Notice are hereby dismissed with prejudice.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

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

NOTICE OF RIGHT TO APPEAL

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

Dated: April 30, 2021

/s/: Janet K. Maxwell-Wickett _____
Janet K. Maxwell-Wickett,
Impartial Hearing Officer
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

APPENDIX A

[REDACTED] v. [REDACTED] SD [REDACTED]
Case No: 2021-DP-0053

Child	[REDACTED]
Attending School	[REDACTED] (TDS)
District Elementary School	[REDACTED] Academy (DE)
Child's Parent(s)/Petitioners	[REDACTED] (Mother/Parent)
	[REDACTED] (Father)
Parent Witnesses:	
Private Psychologist	Dr. [REDACTED] (Dr. V)
Private Speech Language Pathologist	[REDACTED] (SLP-P)
Program Director [REDACTED]	[REDACTED] (DH)
Homebound Instructor/Private Tutor	[REDACTED] (Tutor)
Homebound Instructor	[REDACTED] (HB1)
Private Psychologist	Dr. [REDACTED] (Dr. B)
Homebound Instructor	[REDACTED] (HB2)
District Witnesses:	
Case Manager	[REDACTED] (CM1)
General Education Teacher	[REDACTED] (GE1)
Special Education Teacher	[REDACTED] (SPED1)
School Psychologist	[REDACTED] (PSY1)
School Nurse	[REDACTED] (KK)
School Social Worker	[REDACTED] (SW1)
Speech Language Pathologist	[REDACTED] (SLP1)
District Representative	[REDACTED] (DR)
Speech Language Pathologist	[REDACTED] (SLP2)
Special Education Teacher	[REDACTED] (SPED2)
School Social Worker	[REDACTED] (SW2)
General Education Teacher	[REDACTED] (GE2)
Occupational Therapist	[REDACTED] (OT)
School Psychologist	[REDACTED] (PSY2)
Case Manager	[REDACTED] (CM2)
Schools:	
[REDACTED]	Therapeutic Day School (TDS)
Treating Facilities:	
[REDACTED]	Clinical Therapy Provider (CTP)