

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

STUDENT¹,

Student,

Case No: 2023-DP-0067

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 an 13-year-old, female who is an 8th grade student at a private therapeutic day school, MA. She qualifies for special education services under the disability categories of Autism (ASD) and Other Health Impairment (OHI) pursuant to an IEP and eligibility meeting on June 3, 2021. The Student has a complex medical and educational profile. She has a complex medical history of prematurity with extremely low birth weight, congestive heart disease, bilateral vocal cord paralysis, precocious puberty, and Autism Spectrum Disorder (ASD). She has diagnoses of: Autism Spectrum Disorder (ASD), level 2 with associated language and intellectual

¹ Personal identification information is provided in Appendix A.

impairments; Attention Deficit Hyperactivity Disorder (ADHD), combined presentation (moderate); Specific Learning Disorder with impairment in Reading, Writing, and Math (all severe and even lower than her intellectual abilities). The Student has deficits in intellectual functioning, social cognition, attention functioning, executive functioning, memory functioning, visuospatial/motor functioning, academic achievement, and emotional-behavioral functioning. She has relative strengths in reading emotional cues in others, visual-perceptual matching, and face memory.

Parent maintains the following: (1) The District failed to evaluate the Student in all areas of suspected disability, specifically in the area of specific learning disability (SLD) in reading, math, and written expression thus denying her a free and appropriate public education (FAPE); (2) The District denied the Student a FAPE when it did not find her eligible for special education and related services as a student with a Specific Learning Disability (SLD) from October 13, 2020, to the present; (3) The District failed to provide the Student with Individualized Education Programs (IEPs) that were reasonably calculated to enable the Student to made progress in light of her unique circumstances and to receive educational benefit from October 13, 2022, through the present; (4) The District failed to appropriately implement the Student's IEP from June 14, 2022, to the present, in several areas, thus denying her a FAPE; (5) The District, from October 13, 2020, through May 2022, misrepresented to Parent the range of programs available to remediate the Student's academic deficits preventing her from recognizing the District's denial of FAPE and preventing Parent from meaningfully participating in the Student's IEP process . (IHO Exhibit #1, 11, 17, 33.)

Parent, through legal counsel, filed a due process hearing request on October 13, 2022, which was subsequently amended on December 15, 2022. (IHO Exhibit #1, 11.) The District filed

its response to the due process hearing request on October 24, 2022, and its response to the amended due process hearing request on December 27, 2022. (IHO Exhibit #4, 14.) The parties participated in mediation on October 31st, November 14th, and December 6, 2022. (IHO Exhibit #17.) The Prehearing Conference was commenced and completed on January 17, 2023. (IHO Exhibit #17.)

The original 45-day timeline expired on December 28, 2022. Same was reset upon acceptance of the Second Amended Due Process Complaint Notice. The 45-day hearing timeline for the Second Amended Due Process Complaint Notice expired on February 28, 2023. (IHO Exhibit #12.) On February 22, 2023, the parties jointly requested an extension of same in order to convene the due process hearing on dates mutually convenient to both parties, counsel and witnesses. The joint motion for continuance was granted for good cause shown and the 45-day decision due date was reset to May 8, 2023. Due Process Hearing dates were set by agreement for April 18-21, 2023.² (IHO Exhibit #17, 27.)

The Parent opted for a closed hearing. The Due Process Hearing was held on April 18-21, 2023. Ms. Verity Sandell, Ms. Tracy Hartlieb, and Ms. Cera Horste of Hartlieb, Horste & Sandell, LLC represented Parent. Ms. McKenna Kohlenberg and Ms. Melissa Crawford of the Chicago Board of Education's Department of Law represented the District. The Parent presented two individual witnesses. The District presented one individual witness and the remaining witnesses were joint witnesses.³ The parties presented the following Joint Exhibits (JE) # 1, 3-5, 7-15, 19-28, 33-38, 40-42, 45-48, 54, 75 which were admitted into evidence. The District presented the following District Exhibits (SD) #1, 23-24, 28-32, 34-37, 39-41, 43-49 which were admitted into

² Although the hearing was completed on April 21, 2023, the parties agreed that the decision due date would remain as scheduled for May 8, 2023, in order to provide additional time as the IHO completed a due process hearing in another matter during the week prior to this hearing and had two decisions to render within the same period of time.

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

evidence. Parent presented the following Parent Exhibits (PE) # 3, 5, 18, 27, 44-47 which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-62. Both parties submitted oral closing statements, a written outline thereof, and provided citations to any case law relied upon. The parties provided joint stipulations to this Hearing Officer during the hearing. (IHO Exhibit #59.)

ISSUES

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

(a) Whether the District failed to evaluate the Student in all areas of suspected disability from October 13, 2020, to the present, specifically in the area of specific learning disability (SLD) in reading, math and written expression thus denying her a free and appropriate public education (FAPE).

(b) Whether the District denied the Student FAPE when it did not find her eligible for special education instruction and related services as a student with specific learning disabilities (SLD) from October 13, 2020, to the present.

(c) Whether from October 13, 2020, through the present, the District provided IEPs for the Student reasonably calculated to enable the Student to make progress in light of her unique circumstances and receive educational benefit and thus provided her with a free and appropriate public education (FAPE) specifically as follows:

- (1) Whether the IEPs at issue provided appropriate goals in decoding, encoding, reading fluency, and written expression.
- (2) Whether the IEPs at issue provided the Student with appropriate instruction in reading, written expression and math.

(d) Whether from June 14, 2022, through the present, the District implemented the Student's IEP and thus provided her with a free and appropriate public education (FAPE) specifically as follows:

- (1) By providing and maintaining a daily communication log with Parent regarding the Student's academic and behavioral needs;
- (2) By providing Parent with IEP progress reports to indicate whether the Student is meeting her IEP goals and associated benchmarks;

- (3) By providing an evidence based structured literacy program implemented with fidelity by an instructor with proper certification;
- (4) By providing the Student with related services in the areas of speech language and social work;
- (5) By providing the Student with keyboarding instruction and services.

(e) Whether from October 13, 2020, to May 2022, the District misrepresented to Parent the range of programs available to remediate the Student's academic deficits preventing her from recognizing the District's denial of FAPE and preventing the Parent from meaningfully participating in the Student's IEP process.

Parent requests the following relief:

- a. Order the District to immediately revise the Student's IEP to include the disability eligibility category of specific learning disability in reading, written expression, and math in addition to her current eligibility categories of Autism and OHI;
- b. Order the District to immediately implement the Student's IEP by providing an evidence-based structured literacy program with fidelity by an instructor with proper certification as required by three of the literacy goals in the IEP;
- c. Order the District to immediately revise the Student's IEP to include in-school math intervention for the Student including using an explicit, multisensory, research-based instructional program, taught with fidelity for at least 60 minutes per day, five days per week;
- d. Order the District to immediately revise the Student's IEP to include in-school written expression intervention for the Student including using a research-based writing program, with a focus at the sentence level, such as Writing Revolution, SQ Write or the Expanding Expression Tool, taught with fidelity for at least 30 minutes per day, five days per week;
- e. Order the District to immediately and continually provide IEP progress monitoring records, including goal progress reports, work samples, and observation logs;
- f. Order the District to immediately and continually provide daily communication log of the Student's academic and behavioral needs to Parent;
- g. Order the District to immediately and continually provide homework to the Student at her instructional level;
- h. Order the District to provide to the Student an appropriate placement which would include additional structured literacy services, math interventions and written expression interventions as in b-d above.
- i. Order the District to reimburse the Parent for the cost of ██████████ Literacy's May 2022, evaluation of the Student;
- j. Order reimbursement for the neuropsychological evaluation of the Student by Dr. D in the amount of \$2,325.95;
- k. Order compensatory education in the form of two (2) hours each of social work and speech language services for denial of same to the Student during Extended School Year (ESY) 2022;
- l. Order compensatory education in the form of one (1) hour per week of explicit typing instruction, for 48 weeks per year (40 weeks of regular school year plus 8

- weeks of ESY) until the Student gains proficiency along with assistive technology tools such as Co-Writer, to support spelling, topic-related vocabulary inclusion and sentence development;
- m. Order compensatory education in the form of 5-6 years of year-round intensive reading intervention with an Orton-Gillingham based structured literacy program taught with fidelity for 60 minutes per day, five days per week, for 48 weeks per year (40 weeks of regular school year plus 8 weeks of ESY each year);
 - n. Order compensatory education in the form of 5-6 years of year-round intensive math intervention with an explicit multisensory, research-based instructional program taught with fidelity for 60 minutes per day, five days per week, for 48 weeks per year (40 weeks of regular school year plus 8 weeks of ESY);
 - o. Order compensatory education in the form of 4 years of year-round research-based writing intervention beginning with a focus at the sentence level such as Writing Revolution, SQ Write, or the Expanding Expression tool taught with fidelity for 30 minutes per day, five days per week, for 48 weeks per year (40 weeks of regular school year plus 8 weeks of ESY).

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 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 Parents' counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a 13-year-old, female who is an 8th grade student at a private therapeutic day school, MA. She qualifies for special education and related services under the disability categories of Autism (ASD) and Other Health Impairment (OHI) pursuant to an IEP and eligibility meeting on June 3, 2021. The Student has a complex medical and educational profile. She has a complex medical history of prematurity with extremely low birth weight, congestive heart disease, bilateral vocal cord paralysis, precocious puberty, and Autism Spectrum Disorder (ASD). She has diagnoses of: Autism Spectrum Disorder (ASD), level 2 with associated language and intellectual

impairments; Attention Deficit Hyperactivity Disorder (ADHD), combined presentation (moderate); Specific Learning Disorder with impairment in Reading, Writing, and Math (all severe and even lower than her intellectual abilities). (Testimony of Parent, Dr. D⁴, Dr. C⁵; JE # 1, 7, 15.)

2. The Student has deficits in intellectual functioning, social cognition, attention functioning, executive functioning, memory functioning, visuospatial/motor functioning, academic achievement, and emotional-behavioral functioning. She has relative strengths in reading emotional cues in others, visual-perceptual matching, and face memory. (Testimony of Parent, Dr. D., Dr. C; JE # 1, 7, 15.)

3. The Student has significant deficits in all areas of reading, mathematics, and written expression. (Testimony of Dr. D., Dr. C., MJ⁶, MP⁷, MH⁸; JE #1, 7, 15.)

4. The Student's triennial re-evaluation occurred in May 2021 with the Eligibility meeting occurring on May 27, 2021, and IEP meeting occurring on June 3, 2021. (Testimony of Parent, Dr. C.; JE #10, 21.)

5. The purpose of the District's psychological re-evaluation of the Student was to determine whether she continued to qualify for special education and related services. It was not to investigate or seek out other areas of suspected disability. The psychological re-evaluation consisted of a records review and the BASC-3 rating scale provided to one teacher. The re-

⁴ Dr. D is a pediatric neuropsychologist. She is Board Certified in Pediatric Neuropsychology and has been practicing in the field for twenty-one (21) years. (Testimony of Dr. D.; PE #3.)

⁵ Dr. D is licensed school psychologist. She holds master's degrees in psychology and educational administration and a doctorate in Instructional Leadership. She has been employed as a school psychologist for twenty (20) years. (Testimony of Dr. C.; SD #37.)

⁶ MJ is a licensed substitute teacher. She has been employed by MA for the past five years. She holds no undergraduate or graduate teaching degrees and has no special education training. (Testimony of MJ; SD #36.)

⁷ MP is a licensed special education teacher. She began teaching at MA in Fall 2020. This is her first teaching job. (Testimony of MP; SD #47.)

⁸ MH is the Regional Director of MA overseeing MA sites in Chicagoland and mid-state Illinois. She was the principal and a lead special education teacher at MA from 2019 until the start of the 2022-2023 school year. She holds a bachelor's degree in elementary education and a master's degree in educational administration. (Testimony of MH; SD #45.)

evaluation did not include any classroom observations of the Student, Parent interview, or any testing or evaluation of the Student. (Testimony of Dr. C.; JE # 4, 7, 10.)

6. As part of the Student's 2018 re-evaluation, the District administered the TONI-4 (Test of Nonverbal Intelligence, Fourth Edition) that indicated that the Student had cognitive abilities within the average range. The District conducted no further testing or evaluation related to this information, which was inconsistent with its other evaluation data. (Testimony of Dr. C., Dr. D., JE #1, 7, 15.)

7. As part of the 2021 re-evaluation of the Student, the District did not gather any information or data to determine whether the Student's academic abilities were commensurate with her intellectual abilities. (Testimony of Dr. C., Dr. D.; JE # 1, 7, 15.)

8. The Student has made no progress in reading, mathematics, or written expression since at least 6th grade, the 2020-2021 school year. (Testimony of Dr. D., KF⁹; JE #14, 15, 19, 21, 28.)

9. The Student's present levels of performance in reading, mathematics, and written expression are all at the foundational level, between pre-kindergarten and early first grade levels. (Testimony of Dr. C., Dr. D., KF, MJ, BW¹⁰, JS¹¹; JE # 7, 14, 15, 19, 21, 28, 40-42.)

10. The [REDACTED] Literacy evaluation results concurred with the District's STAR reading and math assessment results. However, the [REDACTED] Literacy evaluation report provided baseline data for the Student's skills in letter-sound knowledge, decoding, reading fluency, reading comprehension, math calculation, math conceptual understanding, written expression and

⁹ KF is the CEO of [REDACTED] Literacy and has been so employed for the past 5 years. She holds a bachelor's degree in special education and taught special education for five years prior to her current position. She also holds an LBS1 certification and a Level 1 Wilson Reading System Certification. (Testimony of KF; PE #5.)

¹⁰ BW holds a bachelor's degree in elementary education. Her school experience has been in the area of a library media specialist. Her ISBE type 03 license with media specialist endorsement has lapsed. (Testimony of BW; SD #44.)

¹¹ JS is an Illinois licensed special education teacher with an LBS1. She holds a bachelor's degree in special education. She has been employed by MA since August 2021. (Testimony of JS; SD #48.)

spelling and made specific program recommendations. This information was uncontroverted by the District at hearing. (Testimony of KF, Dr. D.; JE # 14, 40-42.)

11. The Student has a specific learning disability (SLD) with impairment in reading, mathematics, and written expression. Her deficits in these areas are all severe and are even lower than her intellectual abilities. (Testimony of Dr. D.; JE #15.)

12. Given her deficits and complex medical and learning profile, the Student can achieve a 6th grade level in reading, mathematics, and written expression. This was uncontroverted by the District at hearing. (Testimony of Dr. D.; JE # 15.)

13. With appropriate interventions, the Student should be performing at a 3rd grade or early 4th grade level in reading, mathematics, and written expression at this time based upon her disabilities and unique medical and learning profile. This was uncontroverted by the District at hearing. (Testimony of Dr. D.; JE #15.)

14. The 2021 Speech Language re-evaluation consisted of one classroom observation of the Student, an interview of the Student and administration of the CASL-2. The Student has continuous language based deficits that impact her ability to communicate in academic and social settings. She has reduced listening comprehension skills; reduced skills in the use of age/grade level syntax; and reduced understanding of complex sentence structure. (Testimony of SLP1¹²; JE # 4, 8.)

15. SLP1 did not participate in the Student's eligibility meeting and did not make any goal recommendations for the IEP team. (Testimony of SLP1; JE # 4, 8, 10, 21.)

¹² SLP1 is a licensed Speech Language Pathologist. She no longer works for the District. She holds an ASHA Certificate of Clinical Competence in Speech Language Pathology. (Testimony of SLP1; SD #41.)

16. There are not enough data points to determine whether the Student is currently making progress toward her speech language IEP goals. (Testimony of SLP2¹³; JE #28.)
17. The Student has a long history of frequent absences from school. Attendance data show an 87.47% attendance rate for the 2021-2022 school year and an 86.52% attendance rate for the 2022-2023 school year. (Testimony of Dr. C, MJ, MH, MP, CG, BW; JE #28, SD #34.)
18. The Student's frequent absences from school do not account for the lack of progress for the past three school years as the Student has made no progress in reading, mathematics or written expression during that period. (Testimony of Dr. D., MH.)
19. The Student requires an intensive, research-based, multi-sensory, structured literacy intervention program, such as Lindamood-Bell, Wilson, or Orton-Gillingham, delivered by a certified provider of same, to remediate her literacy skill deficits. This was uncontroverted by the District at hearing. (Testimony of Dr. D, KF, MJ, MP, BW, JS; JE #14-15.)
20. The Student requires a research-based writing program, such as the Writing Revolution, SQ Write, or the Expanding Expression Tool to remediate her written expression deficits and to provide explicit instruction in sentence structure, grammar, punctuation, and in using resources to support her spelling and assist her in incorporating appropriate vocabulary into her writing. This was uncontroverted by the District at hearing. (Testimony of Dr. D, KF, MJ, MP, BW, JS; JE #14-15.)
21. The Student requires an explicit, multisensory, research-based instructional mathematics program, such as Woodin Math, to remediate her skill deficits and to provide her with a strong mathematical foundation and support her acquisition of essential math skills. This was

¹³ SLP2 is a licensed Speech Language Pathologist. She is a contract employee to MA and provides only virtual speech language pathology services. (Testimony of SLP2; SD #46.)

uncontroverted by the District at hearing. (Testimony of Dr. D, KF, MJ, MP, BW, JS; JE #14-15.)

22. The cost to Parent for the private neuropsychological evaluation conducted by Dr. D is \$2,325.95. This balance is outstanding and unpaid to date. (Testimony of Dr. D.)

23. The cost to Parent for the [REDACTED] Literacy evaluation was \$399.00. (Testimony of KF; PE #44-45.)

24. The Student began attending MA, a private therapeutic day school on September 3, 2019, at the start of the 2019-2020 school year. Her IEPs all require 100% removal from the general education environment and placement for 100% of her school day in special education with related services in the areas of speech language, occupational therapy, and social work. (Testimony of MJ, MH, SLP2, OT, MP, SLP3¹⁴, BW, JS, HO¹⁵; JE #19, 21, 28.)

25. Although her IEPs all require special education instruction, for the 2019-2020, 2020-2021, and 2022-2023 school years, the Student received a majority of her classroom instruction from a certified substitute teacher who was not a licensed teacher, held no graduate or undergraduate teaching degrees and had no training in special education. (Testimony of MJ, MH, JS, BW; SD #36, 44.)

26. The Student's extended school year (ESY) instruction for 2022 was provided primarily by a licensed paraprofessional aide. (Testimony of HO.)

27. For ESY 2022, the Student's IEP provided fifteen (15) minutes per week of speech language services and fifteen (15) minutes per week of social work services. The duration of

¹⁴ SLP3 is a Program Director at MA overseeing service providers and supervising MA staff. She has held this position since Summer 2022. She holds a master's degree in speech language pathology and an ASHA Certificate of Clinical Competence. She has no teaching experience and no specific training in reading, writing or math interventions. (Testimony of SLP3; SD #40.)

¹⁵ HO is an Administrator at MA. She is also a licensed special education teacher with an LBS1. She never directly taught the Student. (Testimony of HO; SD #43.)

ESY in 2022 was eight (8) weeks. The Student did not receive any speech language or social work related service minutes during ESY 2022. This was uncontroverted by the District at hearing. (Testimony of SLP3; SD #31.)

28. For the 2021-2022 school year, the Student was in a classroom with two special education teachers, two paraprofessional aides, and 13 to 20 students in total. (Testimony of MP, JS.)

29. The Student has substantial difficulties with attention and focus as is easily distracted. The Student's classroom is frequently noisy due to the number of students and configuration of the classroom. This causes frequent distraction for the Student. (Testimony of MP, JS.)

30. MA uses a variety of curriculums including News to You, Myon, Lexia, Reading Plus, and Moby Max for the Student. Wilson Foundations was also used with the Student during the 2019-2020 school year. (Testimony of MP, JS.)

31. The Sondag System is a structured, systematic, multisensory reading intervention program that follows a specific scope and sequence. (Testimony of BW, JS; PE #46-47.)

32. The Student currently receives Sondag System instruction from BM who is a certified Sondag instructor. However, BW holds a lapsed ISBE type 03 license to teach K-9 with a media specialist endorsement for grades K-12. BW is not a licensed special education teacher.

(Testimony of BW; SD #44.)

33. While the Sondag System follows a specific scope and sequence, the Sondag instruction provided to the Student does not follow that scope and sequence and has not been provided in order. (Testimony of BW, JS; SD #32; PE #46-47.)

34. No evidence was presented at hearing to indicate that the Student had mastered Sunday at any level and pre and post test data reflect no growth by the Student. (Testimony of BW; JE #46, 54.)
35. The Student struggles with encoding, decoding, and reading comprehension. However, her IEPs dated June 22, 2020, and June 3, 2021, do not contain goals targeting any of those areas of need. (Testimony of Dr. D, KF, MJ, MP, MH, BW, JS; JE #19, 21.)
36. The Student struggles with written expression however, the June 22, 2020, and June 3, 2021, IEPs do not provide goals targeting any of those areas. (Testimony of Dr. D, KF, MJ, MP, MH, BW, JS; JE #19, 21.)
37. The Student requires a research-based, multi-sensory, structured literacy program for reading and written expression. However, her June 22, 2020, and June 3, 2021, IEPs do not provide for same. (Testimony of Dr. D, KF, MJ, MP, BW, JS; JE # 19, 21.)
38. The Student requires a research-based multi-sensory instructional math program. However, her June 22, 2020, and June 3, 2021, IEPs do not provide for same. (Testimony of Dr. D, KF, MJ, MP, BW, JS; JE # 19, 21.)
39. The Student's June 14, 2022, IEP requires an evidence based structured literacy program taught with fidelity by an instructor with proper certification. (Testimony of BW, JS; JE #28.)
40. The MA school day is 5.5 hours in duration (1650 minutes per week). The District's school day is 7 hours in duration (2100 minutes per week). The Student leaves class for the bus line at 2:10 p.m. or 2:15 p.m. (school ends at 2:30 p.m.) thus missing additional instructional time. The Student could tolerate and needs a seven (7) hour school day in order to receive the special education and related services she requires to make educational progress. (Testimony of Dr. D, MP, JS; JE #15.)

41. It is unclear whether the Student was meeting her IEP goals during the 2020-2021, 2021-2022, and 2022-2023 school years as District witnesses could not recall the Student's present levels of performance and same were not documented in the IEPs. Further, District witnesses indicated that progress was monitored via review of the Student's work product. However, work samples related to the Student's goals were not presented at hearing and when questioned regarding same, District witnesses could not recall her performance. (Testimony of MJ, MH, MP, BW, JS; JE #19, 21, 28.)

42. Pursuant to her June 14, 2022, IEP, the Student is to receive thirty (30) minutes per week of direct occupational therapy services in a separate class and her IEP goal provides for keyboarding instruction. The Student often receives her occupational therapy services with one other student in her current classroom as there is not enough space for her to receive the services in a separate classroom. The Student is often distracted by the teacher and other students when she receives services in her classroom. Her IEP goal measures both speed and accuracy however, her accuracy level is not tracked. Further, no specific curriculum for keyboarding instruction is used and the Student uses the hunt and peck method. No testimony or documentary evidence was provided at hearing to establish that the Student was meeting her occupational therapy IEP goal. (Testimony of OT¹⁶; JE #28.)

43. The Student's June 14, 2022, IEP provides for a daily communication log with Parent related to the Student's academic and behavioral needs. However, Parent does not receive communication on a daily basis and the academic information provided in the Sunday logs and general academic logs does not provide specific information regarding what the Student is

¹⁶ OT is a licensed occupational therapist with twenty (20) years of experience. He is a part-time contract employee with MA. (Testimony of OT; SD #39.)

working on and what progress she is making related to same. (Testimony of Parent; JE #28, 45-48, SD #32.)

44. IEP Report Cards presented by the District at hearing provide IEP goals and related benchmarks that are not consistent with the IEP Report Cards received by Parent that cover the same period. (Testimony of Parent; JE #38, SD #29.)

45. The Student's teachers and related services providers at MA consistently told Parent, throughout the time period in question, that the Student was making progress academically and was meeting her IEP goals. However, the testimony and documentary evidence introduced at hearing overwhelmingly establishes that the Student has made no progress over the past three (3) school years. (Testimony of Dr. D., KF, MJ, MH, SLP2, OT, MP, SLP3, BW, JS; JE #14, 15, 19, 21, 28.)

46. To remediate the Student's foundational reading skill deficits, she requires 60 minutes per day, 5 days per week of an Orton-Gillingham based structured literacy program, such as the Wilson Reading System, starting in the first step of the program, delivered for approximately 48 weeks per year (the equivalent of one school year (40 weeks) including extended school year (8 weeks)). On average, students make 1.5 years of growth in their reading skills for every one (1) year of such instruction that they receive. Given the Student's current foundational reading skill level, it will take her five to six years to close the gap in her literacy skill level. This was uncontroverted by the District at hearing. (Testimony of KF, Dr. D; JE# 14-15.)

47. To remediate the Student's foundational math skill deficits, she requires one to one math instruction one hour per day, five days per week, forty-eight (48) weeks per year (the length of one school year including extended school year). Math instruction should consist of an explicit, multisensory, research-based instructional approach such as the Woodin Math Curriculum. On

average students grow two (2) full grade levels in their math skills each year. Given the Student's current foundational math skill level, it will take her five to six years to close the gap in her math skill level. This was uncontroverted by the District at hearing. (Testimony of KF, Dr. D.; JE# 14-15.)

48. To remediate the Student's written expression deficits, she requires thirty (30) minutes per day, five days per week, 48 weeks per year (the length of one school year (40 weeks) and extended school year (8 weeks)) for a period of four (4) years. She requires writing remediation using a research-based writing program such as the Writing Revolution, SQ Write, or the Expanding Expression Tool to target the areas of writing in which she needs further support. This was uncontroverted by the District at hearing. (Testimony of KF, Dr. D; JE #14-15.)

49. The duration of the denial of a free and appropriate public education to the Student is three years and eight months – from September 3, 2019, when the Student first enrolled at MA to the present. (Testimony of Dr. C, MJ, MH, MP, SLP1, SLP2, SLP3, BW, JS, HO; JE #1, 3-5, 7-15, 19-28, 33-38, 40-42, 45-48, 54, 75; SD #29-32, 35-37, 44, 49.)

50. The testimony and documentary evidence presented as hearing related to the types of intervention and time required for same to remediate the Student's severe reading, math, and written expression deficits, and to provided required related services minutes, was uncontroverted by the District at hearing. (Testimony of KF, Dr. D.; JE #14-15.)

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:

Free Appropriate Public Education (FAPE)

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). 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’s due process complaint notice does not allege any procedural violations of the IDEA.

As recently clarified by the United States Supreme Court, under the Individuals with Disabilities Education Improvement Act (“IDEA”), a school satisfies its substantive obligation to provide a free appropriate public education by offering a child “an IEP reasonably calculated to enable a child to make progress in light of the child’s circumstances.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.) “[A]n IEP is reasonably calculated to confer educational benefit when it is ‘likely to produce progress, not regression or trivial educational advancement.’” *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7th Cir. 2004.) [T]he progress contemplated by the IEP must be appropriate in light of the child’s circumstances. . . The instruction offered must be ‘specially designed’ to meet a child’s ‘unique needs’ through an *individualized* education

program.” *Andrew F.*, 137 S.Ct. 988. The IEP is to provide a statement of the “special education and related services and supplementary aids and services . . . to be provided to the child.” 34 C.F.R. 300.320(a)(4).

Evaluation

In the Due Process Compliant Notice, Parent alleges that the Student was denied a FAPE when the District failed to evaluate the Student in all areas of suspected disability from October 13, 2020, to the present, specifically in the area of specific learning disability (SLD) in reading, math, and written expression. A student with a disability must be evaluated in all areas of suspected disability. 34 C.F.R. 300.304(c)(4). Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. 34 C.F.R. §300.304(c)(2). The IEP Team must consider the results of the initial or most recent evaluations of the child; and the academic, developmental, and functional needs of the child. 34 C.F.R. §300.324(a)(iii), (iv).

The testimony and documentary evidence presented at hearing illustrate the following. The District’s 2018 re-evaluation of the Student included a TONI-4 test score which indicated that the Student had cognitive abilities in the average range. However, the District conducted no further testing or evaluation related to this score, which was inconsistent with its other evaluation data. (FF #6.) Further, the sole purpose of the District’s 2021 re-evaluation was to determine if the Student continued to qualify for special education and related services, not to discover any other suspected disabilities. The District psychological re-evaluation was very limited in its scope consisting only of a records review, and one behavioral rating scale. (FF #4-5.) The speech language re-evaluation consisted of one classroom observation of the Student and the administration of one assessment, the CASL. (FF #14-15.) Neither evaluation contained any

specific recommendations for special education and related services to address the Student's deficits. (FF #5, 15.)

The Student's lack of academic progress in reading, mathematics and written expression for two school years, combined with TONI-4 data which was inconsistent with respect to the Student's intellectual abilities and academic performance, provided the District with sufficient information to warrant further testing and evaluation. However, the District conducted no further testing or evaluation. (FF #4-9.) Parent's private evaluation from [REDACTED] Literacy, confirmed that the Student's present levels of performance were similar to those provided by the District's STAR reading and mathematics assessment data and further provided baseline data for the Student in multiple areas that the District testing did not. (FF #10.) Dr. D's private pediatric neuropsychological report consisted of extensive testing related to the Student's intellectual functioning, social cognition, attention functioning, executive functioning, memory functioning, visuospatial/motor functioning, academic achievement, and emotional-behavioral functioning. (FF # 2-3.) While Dr. C concluded that the Student did not and could not have a specific learning disability, as she had an intellectual disability, and attributed the Student's lack of academic progress to her identified disabilities and long history of frequent absences from school, this Hearing Officer finds the testimony and documentary evidence provided by Dr. D to be credible and persuasive. Dr. D conducted extensive testing and assessments that the District and Dr. C did not. Dr. D conducted a Parent interview, behavioral observations, collected testing data using multiple assessment tools and sought behavioral data from Parent and teacher. Further, Dr. D has over twenty-one (21) years of experience as a pediatric neuropsychologist with expertise in treating children with ASD. Based upon Dr. D's educational background, extensive experience, and expertise working with children with ASD, this Hearing Officer finds her testimony to be credible

and overwhelmingly persuasive. The District failed to evaluate the Student in all areas of suspected disability when it failed to evaluate her for a specific learning disability in reading, mathematics, and written expression from October 13, 2020, to the present. Therefore, it is the finding of this Hearing Officer that Parent is entitled to reimbursement for the cost of Dr. D's evaluation in the amount of \$2,325.95. (FF #22.) Further, as the [REDACTED] Literacy evaluation not only confirmed the District's STAR reading and mathematics assessment data, but also provided additional information related to the Student's present levels of performance in multiple areas, Parent is entitled to reimbursement for same in the amount of \$399.00. (FF #23.)

Eligibility

A group of qualified professionals and the parent may determine that a child has a specific learning disability, if -

(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

- (i)** Oral expression.
- (ii)** Listening comprehension.
- (iii)** Written expression.
- (iv)** Basic reading skill.
- (v)** Reading fluency skills.
- (vi)** Reading comprehension.
- (vii)** Mathematics calculation.
- (viii)** Mathematics problem solving.

(2)

- (i)** The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or
- (ii)** The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305; and

(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of -

- (i)** A visual, hearing, or motor disability;
- (ii)** An intellectual disability;
- (iii)** Emotional disturbance;
- (iv)** Cultural factors;
- (v)** Environmental or economic disadvantage; or
- (vi)** Limited English proficiency.

34 C.F.R. §300.304 through §300.309.

The testimony and documentary evidence introduced at hearing reveal that the Student has significant discrepancies between her intellectual abilities and her academic performance in reading, writing, and mathematics. This discrepancy is not explained by her other diagnoses of Autism Spectrum Disorder (ASD), mild intellectual disability, or Attention Deficit Hyperactivity Disorder (ADHD.) (FF #11.) As far back as 2018, the District had reason to suspect that there was an unexplained discrepancy between the Student's cognitive abilities and her academic performance. However, it did not seek any additional testing or evaluation data related to same. (FF #6-7). The Student has significant impairments in reading, mathematics, and written expression and is functioning at between a pre-kindergarten and early first grade level in all areas. (FF #8-11.) Based upon the credible, persuasive testimony of Dr. D and corroborated by her, [REDACTED] Literacy and the District's own documentary evidence introduced at hearing, it is the finding of this Hearing Officer that the Student is eligible for special education and related services under the disability category of Specific Learning Disability in the areas of reading, mathematics, and written expression, as well as her current eligibility categories of Autism Spectrum Disorder (ASD) and Other Health Impairment (OHI).

Individualized Education Program (IEP)

The IEP is the “centerpiece” of the IDEA. The IEP is constructed only after careful consideration of the child’s present levels of performance of achievement, disability, and potential for growth. For a child not integrated in the regular education classroom, a child’s IEP may not need to aim for grade level advancement if that is not a reasonable prospect for the child. *Andrew F. v. Douglas County Sch. Dis. Re-1*, 375 S. Ct. 988, 69 IDELR 174 (US 2017). The child’s program, however, “must be appropriately ambitious in light of the circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” *Id.* The goals can differ; however, the goals should provide the child with the chance to “meet challenging objectives.” The IEP must also aim to enable the child to make progress. The Supreme Court explained that an IEP which provides for merely more than de minimis progress from year to year “can hardly be said to have offered an education at all.” *Andrew F. v. Douglas County Sch. Dis. Re-1*, 375 S. Ct. 988, 69 IDELR 174 (US 2017). Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Id.*, at 206–207, 102 S.Ct. 3034.

The IDEA does not require states to develop IEPs that “maximize the potential of handicapped children.” *Board of Educ. v. Rowley*, 458 U.S. at 189, 102 S.Ct. at 3042. What the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by loving parents.” *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d at 567 (*internal citation omitted*); see *Carlisle Area School v. Scott P.*, 62 F.3d at 533–34 (school districts “need not provide the optimal level of services, or even a level that would confer additional benefits, since the IEP required by IDEA represents only a ‘basic floor of opportunity’” (*quoting Board of Education v. Rowley*, 458 U.S. at 201, 102 S.Ct. at 3048)).

A school district is not required to provide a student with the “best conceivable” individualized education program, but only an IEP that is reasonably calculated to enable the student to receive educational benefits. *Alex R. v. Forrestville Valley Community Unit School District #221*, 375 F.3d 603,616 (7th Cir. 2004), *cert. denied*, 125 S.Ct. 628 (2004). Local school districts are not required to be guarantors of educational progress but are required to develop IEPs that are reasonably calculated to allow for progress. When determining whether a student has benefited from an educational program, the courts look, at least in part, to whether the student is making progress toward the goals included in the student’s IEP. *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458(9th Cir. 1996). *See also Brad K. v. Board of Education of City of Chicago, Chicago Public School District #299*, 787 F.Supp.2d 734, 738 (N.D. Ill. 2011), quoting *Jaccari J. v. Board of Education of City of Chicago, District No. 299*, 690 F.Supp.2d 687, 702 (N.D. Ill. 2010) (factors to consider when determining whether an IEP is reasonably calculated to provide educational benefits “include: ‘(1) the child’s potential; (2) whether his IEPs were tailored to his unique needs; (3) whether his IEPs provided access to specialized services; (4) whether they addressed disability-related acts; and (5) whether the child achieved progress during the relevant time period’”). Goals, short-term objectives, and descriptions of present levels of the student’s performance should reflect the student’s progress, or, if there is a lack of progress, the school district should consider adjusting the program to provide a different configuration or amount of services or a different placement to make it more likely that the IEP will confer educational benefit. *See Kevin T. v. Elmhurst Community School Dist. No. 205*, No. 01 C 0005, 2002 WL 433061 (N.D. Ill. Mar. 20, 2002).

The Seventh Circuit has ruled that under the *Rowley* standard, an “IEP passes muster provided that it is . . . ‘likely to produce progress, not regression or trivial educational

advancement.”” *Alex R.*, *supra*, 375 F.3d at 615, quoting *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245,248 (5th Cir. 1997). *See also Richard Paul E. v. Plainfield Community Consolidated School District 202*, No. 07 C 6911, 2009 WL 995459 at *17 (N.D. Ill. Apr. 9, 2009) (finding school district did not violate child’s rights under IDEA when IEP was reasonably calculated to provide him with educational benefits by addressing his behavioral and learning disabilities). Indeed, the Seventh Circuit has opined that the “critical issue [is] whether the school administrators were unreasonable” when making placement and service determinations. *School District of Wisconsin Dells v. Z.S.*, 295 F.3d 671, 676 (7th Cir. 2002) (finding that one-month delay in figuring out what to do with student after he had to be removed from school was reasonable).

IEP Goals & Instruction

Parent alleges that the District failed to provide IEPs for the Student that were reasonably calculated to enable the Student to make progress in light of her unique circumstances and receive educational benefit and thus failed to provide her with a free and appropriate public education, from October 13, 2020, through the present by failing to provide appropriate goals in decoding, encoding, reading fluency, and written expression and failing to provide appropriate instruction in reading, written expression and math. The testimony and documentary evidence admitted at hearing reveals the following. The Student currently lacks foundational reading, written expression, and math skills. (FF #1-11.) While she has a mild intellectual disability, she also has specific learning disabilities in reading, written expression and math that are more severe than her intellectual impairment. The Student should be performing at a 3rd grade to early 4th grade level in all areas. She is currently performing at a pre-kindergarten to early 1st grade level in all areas. (FF #9-13.) The Student should be able to achieve at least a 6th grade skill level in all areas. (FF

#12.) While District witnesses testified that the Student was meeting her IEP goals during the time period at issue, those conclusions were purportedly based upon review and assessment of the Student's work samples. However, none of the Student's work samples were produced at hearing and District witnesses could not clearly articulate what the Student's present levels of performance were and what specifically reflected her progress. (FF #40-44.) There was much discussion about the various curricula such as Moby Max, Lexia, and Myon tracking Student progress data. However, the data was either not introduced at hearing or reflected a pre-kindergarten to early 1st grade skill level for the Student. (FF # 41-45.) The IEPs did not contain any written expression goals. (FF #35-36.) Therefore, it is the finding of this Hearing Officer that the testimony of District witnesses related to the Student's IEP goals and progress toward same was not credible and was not substantiated by the data produced at hearing. The documentation produced at hearing reflected that the Student had made no progress in reading, written expression or mathematics in three school years, since at least 6th grade, and was functioning at a pre-kindergarten to early 1st grade level in all areas. This was further substantiated by the testimony and testing data of Dr. D. The Student did not have appropriate IEP goals constructed to address her deficits in reading, mathematics and written expression as the overwhelming testimony and documentary evidence introduced at hearing reflected no progress in three school years.

Further, she was not provided with appropriate instruction in reading, written expression, and math. The IEP must aim to enable the Student to make progress. The Supreme Court in *Andrew F.* explained that an IEP which provides for merely more than *de minimus* progress from year to year "can hardly be said to have offered an education at all." *Andrew F.* at 206-207. While districts have discretion to choose methodology, when there is evidence that their chosen approach is not working they have a responsibility to stop using the ineffective approach and implement an

appropriate one. See *I.S. v. Sch. Town of Munster*, 64 IDELR 40 (N.D. Ind. 2014); *Falmouth Sch. Dept. v. Doe*, 81 IDELR 151 (1st Cir. 2022). The IEPs at issue provided for *de minimus* progress at best and, in the words of the *Andrew F.* Court, “can hardly be said to have offered an education at all.” *Id.* All of the Student’s IEPs reflect removal from the general education setting for 100% of her school day and a requirement for 100% special education instruction and related services. (FF #24-34, 40.) It is very troubling to this Hearing Officer that the Student, with severe deficits in multiple areas, in a private therapeutic day school, was receiving instruction almost exclusively from “certified substitute” teachers who were not teachers at all. These individuals had no undergraduate or graduate teaching degrees, were not licensed teachers, and were certainly not special education teachers. (FF #24-34.) The curriculums used were a hodge podge of methodologies which did not enable the Student to make any academic progress. (FF #30-40.) Wilson Foundations was used with the Student for part of a school year but was discontinued and no one knew why or what, if any, progress the Student made, or at what level instruction commenced or concluded. The Sondag System is a research-based literacy program that requires scope and sequence delivery. (FF #31-32.) However, BW, who was not a licensed teacher, was delivering instruction to the Student and was not following the Sondag scope and sequence. (FF #32-34.) She testified that she delivered Sondag literacy instruction outside the scope and sequence in order to support and prepare the Student for lessons in other academic areas provided by JS. However, JS’s testimony directly conflicted with this. JS testified that she prepared lessons in other academic areas that would utilize information and reinforce skills that the Student was learning from BW within the required Sondag scope and sequence. As the testimonies of BW and JS directly conflicted with each other, this Hearing Officer finds the testimony of both to be unreliable. What is clear is that the District was not providing the Student with appropriate

instruction in reading, written expression, and math. All of the many curriculums used culminated in the same unfortunate result for this Student: a lack of academic progress over at least three school years and a clear lack of a free and appropriate public education.

Based upon the overwhelming testimony and documentary evidence presented at hearing, it is the finding of this Hearing Officer that the Student's IEPs failed to provide appropriate goals in decoding, encoding, reading fluency, and written expression and failed to provide appropriate instruction in reading, written expression and math. They were not reasonably calculated to enable her to make progress in light of her unique circumstances and receive educational benefit and thus, denied her a free and appropriate public education.

Implementation

Parent further alleges that the Student's June 14, 2022, IEP was not appropriately implemented thus denying her a free and appropriate public education. The June 14, 2022, IEP provided that daily communication logs be maintained and provided to Parent regarding the Student's academic and behavioral needs. While the logs were provided to Parent, they were not provided on a daily basis. Further, the information contained within the logs was non-specific and did not provide information related to what the Student was working on and what progress she was making related to her academic and related service goals. (FF #43.) The Parent was to be provided with IEP progress reports to indicate whether the Student was meeting her IEP goals and associated benchmarks. At hearing, two sets of inconsistent IEP Report Cards were presented, one set presented by the District and one set received by Parent. (FF #44.) This again is very troubling to this Hearing Officer. The consistent testimony of all District witnesses was that the Student was making progress and same was determined based upon her work product. However, the Student's work product or data related to same was not provided at hearing to substantiate these claims.

Further, both District data and Dr. D's evaluation data were consistent and reflected no progress in reading, written expression or mathematics over three school years. (FF #41, 43-44.)

Parent alleges that the District failed to implement the Student's June 14, 2022, IEP by failing to provide an evidence based structured literacy program implemented with fidelity by an instructor with proper certification. As indicated above, the Student was provided with Sunday System instruction. However, the instruction was not implemented with fidelity and there was no data presented to show that the Student was making any progress via that program. (FF #31-34.) Parent also alleges failure to provide the Student with related services in the areas of speech language and social work. The testimony and documentary evidence is clear that the Student did not receive the required speech language and social work related services during ESY 2022. (FF #26-27.) The Student's June 14, 2022, IEP has an independent functioning goal, to be implemented by the occupational therapist, related to keyboarding. The testimony and documentary evidence presented at the hearing reflects that no specific methodology is being used to provide keyboarding instruction and the Student is simply using a "hunt and peck" method. Further, services are to be provided in a separate class. However, the services are generally delivered to the Student in her classroom which results in the Student being distracted during instruction. (FF #42.) Based upon the testimony and documentary evidence presented at hearing, it is the finding of this Hearing Officer that the District failed to appropriately implement the Student's June 14, 2022, IEP, thus denying her a free and appropriate public education.

Parent's final allegation is that the District misrepresented to her the range of programs available to remediate the Student's academic deficits preventing Parent from recognizing the District's denial of FAPE and preventing Parent from meaningfully participating in the Student's IEP process. Specifically, Parent argues that the staff at MA repeatedly indicated that the Student

was making progress when that was clearly not the case; offered a structured literacy program in June 2022 when one had not been previously offered; and misrepresented to Parent that the Student was receiving instruction from licensed special education teachers. As indicated above, despite consistent assertions from MA witnesses that the Student was making academic progress, no documentary evidence or data was introduced at hearing to substantiate those claims. When specifically asked how progress was determined witnesses could not speak to the Student's levels of academic functioning at the beginning or conclusion of each academic year. The Student was not making progress in reading, written expression or mathematics for at least three school years. This was supported by not only Dr. D's extensive testing, but also by the District's own data. (FF #8-10, 15-16, 24-27, 44-45.) Equally troubling is that the District placed the Student in a private therapeutic day school as she required 100% removal from the general education setting in order to receive special education and related services. However, she was at all times receiving instruction predominantly from "certified substitute" teachers who were not licensed teachers, did not have any undergraduate or graduate teaching degrees or credentials, and were not licensed special education teachers. (FF #25-26, 32.) While MA staff indicated that these individuals were supervised by licensed special education teachers, it is unclear from hearing testimony what the true extent of that supervision was. What is clear, is that the Student was receiving a majority, if not all of her instruction, from individuals who were not licensed teachers and who were certainly not licensed special education teachers. (FF #25-26.)

While the district attempted to blame the Student's history of frequent absences from school for her lack of academic progress, this Hearing Officer finds that not to be the case. Dr. D credibly testified that the Student's attendance rates would not result in a complete lack of any academic progress in the areas of reading, mathematics, or written expression. (FF #17-18.)

Further, District witness, MH, indicated that the Student's attendance was not a concern. The Student's history of chronic absences did not excuse the District from its obligation to provide appropriate IEPs, special education instruction, and related service minutes to address the Student's specific needs. *See Hill v. District of Columbia*, 68 IDELR 133 (D.D.C. 2016); *Rayna P. v. Campus Cmty. Sch.*, 118 LRP 33077 (D. Del. 8/10/18.). The District had an obligation to ensure that its private therapeutic day school placement, MA, was providing this Student with a FAPE. The overwhelming testimony and documentary evidence introduced at hearing clearly establishes that the District failed in its obligation to this Student and denied her a FAPE from September 2019, when she initially enrolled, to the present.¹⁷

Compensatory Education

“Compensatory services are well-established as a remedy under the IDEA.” *Jaccari J. v. Board of Educ. of City of Chicag, Dist No. 299*, 690 F.Supp.2d 687, 707 (N.D. Ill. 2010). 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, 522 (D.C. Cir. 2005). A hearing officer has the authority to award compensatory education. *ZJ v. Bd. of Educ. of Chi.*, 344 F. Supp. 3d 988, 1002 (N.D. Ill. 2018). The testimony and documentary evidence at hearing reflect that the Student has made no progress in academic skills in the areas of reading, mathematics, and written expression and has been denied related service minutes or appropriate related services in several areas. (FF #.) This denial of a FAPE to this Student extends from September 2019 through April 2023 which is a period of 3 years and 9 months. (FF #24-30, 45, 49.)

¹⁷ While the Student's placement was not presented as an issue before this Hearing Officer, based upon the testimony and documentary evidence presented at hearing, it is the recommendation of this Hearing Officer that the parties convene an IEP meeting to revisit same.

The Student has the cognitive and intellectual ability to function at least at a 6th grade level. (FF #9-13.) To remediate the Student's foundational reading skill deficits, she requires 60 minutes per day, 5 days per week of an Orton-Gillingham based structured literacy program, such as the Wilson Reading System, starting in the first step of the program, delivered for approximately 48 weeks per year (the equivalent of one school year (40 weeks) including extended school year (8 weeks)). Given the Student's current foundational reading skill level, it will take her five to six years to close the gap in her literacy skill level. (FF #46.)

To remediate the Student's foundational math skill deficits, she requires one to one math instruction one hour per day, five days per week, forty-eight (48) weeks per year (the length of one school year including extended school year). Math instruction should consist of an explicit, multisensory, research-based instructional approach such as the Woodin Math Curriculum. Given the Student's current foundational math skill level, it will take her five to six years to close the gap in her math skill level. (FF #47.)

To remediate the Student's written expression deficits, she requires thirty (30) minutes per day, five days per week, 48 weeks per year (the length of one school year (40 weeks) and extended school year (8 weeks)) for a period of four (4) years. She requires writing remediation using a research-based writing program such as the Writing Revolution, SQ Write, or the Expanding Expression Tool to target the areas of writing in which she needs further support. (FF# 48.)

The Student is entitled to two (2) hours of compensatory education for speech language related service minutes and two (2) hours of social work related services minutes for those missed services during ESY 2022. (FF #26-27.) The Student is also entitled to compensatory keyboarding instruction related to her June 14, 2022, IEP which provided for same. (FF #42.)

The testimony and documentary evidence presented at hearing related to the types of intervention and time required to remediate the Student's foundational reading, math, and written expression deficits and to compensate for related service minutes not provided was uncontroverted by the District at hearing. (FF #50.) This Hearing Officer finds the testimony of Dr. D and KF to be credible and persuasive based upon their respective education, training, extensive experience, and observations of the Student. This Hearing Officer finds this request to be reasonable and to be supported by the recommendations of Dr. D and KF and it is so ordered.

CONCLUSION

Based upon the Findings of Fact and Conclusions of Law, the District denied the Student a FAPE when:

- (a) From October 13, 2020, to the present, the District failed to evaluate the Student in all areas of suspected disability, specifically in the area of specific learning disability (SLD) in reading, math, and written expression;
- (b) From October 13, 2020, to the present, the District failed to find the Student eligible for special education instruction and related services as a student with a specific learning disability (SLD);
- (c) From October 13, 2020, to the present, it failed to provide the Student with IEPs reasonably calculated to enable the Student to make progress in light of her unique circumstances and receive educational benefit by failing to provide appropriate goals in decoding, encoding, reading fluency, and written expression and failing to provide appropriate instruction in reading, mathematics, and written expression;
- (d) From June 14, 2022, to the present, the District failed to implement the Student's IEP as follows:

- a. Failed to provide and maintain a daily communication log with Parent regarding the Student's academic and behavioral needs;
 - b. Failed to provide Parent with IEP progress reports to indicate whether the Student is meeting her IEP goals and associated benchmarks;
 - c. Failed to provide an evidence based structured literacy program implemented with fidelity by an instructor with proper certification;
 - d. Failed to provide the Student with related services in the areas of speech language and social work during ESY 2022;
 - e. Failed to provide the Student with keyboarding instruction and services;
- (e) From October 13, 2020, to May 2022, the District misrepresented to Parent the range of programs available to remediate the Student's academic deficits preventing her from recognizing the District's denial of FAPE and preventing Parent from meaningfully participating in the Student's IEP process.

Parent is entitled to the requested relief in its entirety.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

Parent is hereby granted the following relief:

- a. The District is hereby Ordered to immediately revise the Student's IEP to include the disability category of Specific Learning Disability (SLD) in reading, mathematics, and written expression, in addition to her current eligibility categories of Autism and OHI;
- b. The District is hereby Ordered to immediately implement the Student's IEP by providing an Orton-Gillingham based structured literacy program to the Student, for 60 minutes per day, five days per week, implemented with fidelity by an qualified, certified instructor;
- c. The District is hereby Ordered to immediately revise the Student's IEP to include in-school math intervention using an explicit, multisensory, research-based

program implemented with fidelity by a qualified, certified instructor, for 60 minutes per day, five days per week;

- d. The District is hereby Ordered to immediately revise the Student's IEP to include in-school written expression instruction for the Student using a research-based writing program, with a focus at the sentence level, such as Writing Revolution, SQ Wrtie or the Expanding Expression Tool, provided by a qualified, certified instructor with fidelity for 30 minutes per day, five days per week;
- e. The District is hereby Ordered to immediately and continually provide to Parent IEP progress monitoring records, including goal progress reports, work samples, and observation logs;
- f. The District is hereby Ordered to immediately and continually provide to Parent daily communication logs of the Student's academic and behavioral needs;
- g. The District is hereby Ordered to provide any homework related to the above programs listed in (b) through (d) above to the Student at her instructional level;
- h. The District is hereby Ordered to provide the Student with a placement which will provide the structured literacy, math, and written expression services and interventions required in paragraphs (b) through (d) above;
- i. The District is hereby Ordered to reimburse Parent, or pay Dr. D directly, for the cost of Dr. D's neuropsychological evaluation in the amount of \$2,325.95 upon receipt of statement for services or proof of payment for same;
- j. The District is hereby Ordered to reimburse Parent for the cost of the [REDACTED] Literacy Report in the amount of \$399.00 upon receipt of proof of payment for same;
- k. The District is hereby Ordered to provide compensatory education up to 2 hours of social work related services and up to 2 hours of speech language related services. Parent shall have six (6) years from the date of issuance of this Final Determination and Order in which to utilize said award;
- l. The District is hereby Ordered to provide compensatory education up to 48 hours in total for explicit typing instruction along with assistive technology, such as Co-Writer, to support spelling, topic-related vocabulary inclusion and sentence development provided by a qualified private provider. Parent shall have six (6) years from the date of issuance of this Final Determination and Order in which to utilize said award;
- m. The District is hereby Ordered to provide compensatory education up to 1,440 hours in total for Orton-Gillingham based structured literacy instruction provided

by a qualified private provider. Parent shall have six (6) years from the date of issuance of this Final Determination and Order in which to utilize said award;

- n. The District is hereby Ordered to provide compensatory education up to 1,440 hours in total for one-on-one math tutoring instruction using an explicit multisensory, research-based instructional program provided by a qualified private provider. Parent shall have six (6) years from the date of issuance of this Final Determination and Order in which to utilize said award;
- o. The District is hereby Ordered to provide compensatory education up to 480 hours in total for research-based writing intervention with a focus at the sentence level provided by a qualified private provider. Parent shall have six (6) years from the date of issuance of this Final Determination and Order in which to utilize said award;

In the event extenuating circumstances arise, such as prolonged illness documented by a physician, the above timelines for redemption of the compensatory education awarded in paragraphs (a) through (o) above shall be extended in duration up to the length of the illness.

The District shall reimburse Parent, or pay directly, the above ordered costs within 30 calendar days of receipt of proof of same (i.e. statement for services or invoice from provider, facility, or transportation provider).

In accordance with 105 ILCS 5/14-8.02a(h), within **45** calendar days of receipt of this Order, the school district must submit proof of compliance to:

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

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: May 4, 2023

[Redacted signature area]

/s/: Janet K. Maxwell-Wickett
Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[Redacted text block]

APPENDIX A

[REDACTED] v. [REDACTED] SD [REDACTED]
Case No: 2023-DP-0067

Student	[REDACTED]
Attending School	[REDACTED] (MA)
District School	N/A
Student's Parent/Petitioner	[REDACTED]
Parent Witnesses:	
[REDACTED] Literacy	[REDACTED] (KF)
Neuropsychologist	[REDACTED] (Dr. D)
Joint Witnesses:	
Certified Substitute Teacher	[REDACTED] (MJ)
Special Education Teacher/Principal	[REDACTED] (MH)
Speech Language Pathologist	[REDACTED] (SLP2)
School Psychologist	[REDACTED] (Dr. C)
Occupational Therapist	[REDACTED] (OT)
Speech Language Pathologist	[REDACTED] (SLP1)
Special Education Teacher	[REDACTED] (MP)
Speech Language Pathologist	[REDACTED] (SLP3)
[REDACTED]/Certified Substitute Teacher	[REDACTED] (BW)
Special Education Teacher	[REDACTED] (JS)
ESY Teacher	[REDACTED] (HO)
District Witness:	
[REDACTED] Literacy	[REDACTED] (BR)
Schools:	
Private Therapeutic Day School	[REDACTED] (MA)