

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

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**IN THE MATTER OF:**

AR, a minor, by and through His/Her Parents,

Student/Petitioner, v.

Case No. 2024-DP-0034

██████ School District # ██████

Mary Jo Strusz

District/Respondent.

Impartial Hearing Officer

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**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., the Illinois School Code, 105 ILCS 5/14-8.02a, and their respective implementing regulations.

**BACKGROUND**

Petitioners are the parents of AR ("Student"), who was born on October 3, 2020, and is a three-year-old student, AR was initially found eligible for IEP special education services on May 22, 2023, under the primary eligibility category of speech language impairment. The student's initial IEP was developed on May 22, 2023.

Petitioners filed a due process complaint ("Complaint") against the District on August 15, 2023.<sup>1</sup> This Hearing Officer ("IHO") was appointed to preside over the due process complaint on August 16, 2023.<sup>2</sup> The District filed its response to the due process hearing request on August 24, 2023.<sup>3</sup> The Parties participated in mediation on September 8, 2023, mediation was unsuccessful.

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<sup>1</sup> IHO Exhibit #1.

<sup>2</sup> IHO Exhibit #3.

<sup>3</sup> IHO Exhibit #5.

The District filed a Motion to Dismiss the Complaint on September 11, 2023,<sup>4</sup> alleging the Student was not three (3) years of age, and the case is not ripe for adjudication. Following a briefing schedule, this IHO entered an Order on September 17, 2023,<sup>5</sup> ruling in favor of the District and granting the Parents leave to file an amended due process complaint (“ADPC”) on or after October 3, 2023.

In anticipation of the ADPC being filed, and by agreement of the Parties, a recorded prehearing conference was held by Zoom on September 19, 2023, from 10:00 a.m. to 11:38 a.m.<sup>6</sup> In addition to the IHO, participating in the conference were: YZ (“Mother”)<sup>7</sup> a self-represented Parent, and the District’s legal counsel<sup>8</sup>.

The original 45-day timeline was set for October 26, 2023. On September 21, 2023, the parties filed a Joint Motion requesting an extension of the timeline to participate in the due process hearing and allow for the statutory decision period.<sup>9</sup> On September 27, 2023 the Order extending the decision date, for good cause, to November 22, 2023 was entered.<sup>10</sup>

The Parents opted for a closed hearing. The Due Process Hearing was held on November 7 and 8, 2023. Caroline Roselli and Hannah May of Robbins, Schwartz, Nicholas, Lifton & Taylor represented the District and [REDACTED] the Superintendent of Student Services appeared as the District Representative. The Parents were self-represented by YZ<sup>11</sup> (“Mother”). A court reporter was present.

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<sup>4</sup> IHO Exhibit 11.

<sup>5</sup> IHO Exhibit 17.

<sup>6</sup> IHO Exhibit 24.

<sup>7</sup> All personally identifiable information is listed in Exhibit A

<sup>8</sup> All personally identifiable information is listed in Exhibit A .

<sup>9</sup> IHO Exhibit 18.

<sup>10</sup> IHO Exhibit 19.

<sup>11</sup> All personally identifiable information is listed in Exhibit A

The Parents and District presented the following: Joint Exhibits (“JE”) JE 1-1 through 4-161 were admitted into evidence.<sup>12</sup> Parents exhibit P-1,<sup>13</sup> and District Exhibits (“SD”) SD1-1 to 3-25<sup>14</sup> were admitted into evidence. The Hearing Officer’s Exhibits were IHO Exhibits #1-40.<sup>15</sup> A Joint Stipulations of Fact was admitted into evidence.<sup>16</sup> Parents and District presented oral closing arguments and provided a written outline thereof to the IHO.<sup>17</sup> The District provided citations to any case law relied upon. The record was closed on November 9, 2023.

The sole witness who testified on behalf of the Student was Mother. The District presented four witnesses: HN (School Psychologist), CF (Blended Preschool Teacher), AH (Speech Language Pathologist), and KM (Assistant Superintendent).<sup>18</sup>

### **ISSUES**

The Parents present the following issues and requested relief for determination by this Hearing Officer. I have determined that I have the authority to hear the issues listed below and grant the relief sought by Parents.

**Issue 1:** Whether the placement proposed for Student in Student’s May 22, 2023, IEP, which provides speech itinerant services for thirty (30) minutes per week, was a violation of the least restrictive environment required by the IDEA 20 U.S.C. §1412(a)(5) and a denial of a Free Appropriate Public Education (“FAPE”)?

**Issue 2:** Whether the District failed to consider the recommendations from Student’s Early Intervention Speech Pathologist and the Parents in determining Student’s placement, and whether this impeded the Student’s right to FAPE because the IEP team failed to implement the recommendations that would have provided the Student with FAPE.

**Issue 3:** Whether the District failed to properly consider its own evaluation of Student in the area of social emotional development, and failed to provide IEP services in this area despite clear information that Student was reluctant to interact with other students, thus denying her a FAPE?

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<sup>12</sup> Iho Exhibit 40.

<sup>13</sup> IHO Exhibit 39.

<sup>14</sup> IHO Exhibit 38.

<sup>15</sup> IHO Exhibits 1-37 (including this determination)

<sup>16</sup> IHO Exhibit 34.

<sup>17</sup> IHO Exhibits 38 and 39.

<sup>18</sup> All personally identifiable information is listed in Exhibit A. KM was previously the Director of Student Services.

**Issue 4:** Whether the District’s proposed placement, in a separate room away from general education peers is an inappropriate preschool environment, and whether the location for services denies the Student a FAPE?

In Response, the District maintains that the May 22, 2023 IEP provides the Student a FAPE in the least restrictive environment (“LRE”). The District asserts it considered the report from Student’s Early Intervention Speech Pathologist and the Parents concerns when determining Student’s placement and properly considered Student’s social- emotional development evaluation when determining Student’s placement, and the location for speech itinerant services does not present an inappropriate preschool environment and does not deny Student a FAPE.

**PARENTS REQUEST THE FOLLOWING RELIEF:**

- A. A finding in favor of the Parent on the above issues;
- B. A finding that the educational placement proposed by the District does not provide a FAPE in the least restrictive environment (“LRE”), and Student should be placed for 700 minutes weekly at the District’s community preschool-five days per week.

**PARENTS’ AND DISTRICT’S JOINT STIPULATIONS OF FACT**

1. [Student’s] birthday is October 3, 2020, and she is a 3-year-old whose parents/legal guardians reside within the geographical boundaries of the District and who is enrolled in the District. She is eligible for special education under the *Individuals with Disabilities Education Act* (“IDEA”) category of speech and language impairment.
2. [Student] is a resident of [REDACTED] School District No. [REDACTED]
3. The District received [Student’s] 6-month early intervention report from Clearbrook Early Intervention Services on March 13, 2023.
4. The domain meeting for [Student’s] evaluation was held on April 14, 2023.
5. [Student’s] initial consent for evaluation was signed on April 21, 2023.
6. [Student’s] evaluation took place on April 21, 2023, and May 1, 2023.
7. On May 22, 2023, an initial eligibility and IEP meeting was convened, and it was determined that [Student] qualified for an IEP under the category of Speech and Language Impairment.
8. The following individuals attended the May 22, 2023, meeting: YZ, Parent; KM<sup>19</sup>, LEA Representative Special Education Administrator, director/Designee; CF<sup>20</sup>, General Education and Special Education Teacher; AH<sup>21</sup> Speech/Language Pathologist;

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<sup>19</sup> Personally identifiable information is in Exhibit “A”.

<sup>20</sup> Personally identifiable information is in Exhibit “A”.

<sup>21</sup> Personally identifiable information is in Exhibit “A”.

RH<sup>22</sup>, Occupational Therapist; and HN<sup>23</sup>, School Psychologist.

### **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 the District's attorney and the Parent this Hearing Officer's Findings of Fact are as follows:

### **Background**

1. In December of 2022<sup>24</sup>, at the age of 2 years, 2 months, the Student qualified for speech-language therapy to address identified delays in speech and receptive language through Early Intervention ("EI") Services.<sup>25</sup> Through EI, Student received weekly speech therapy, in the home setting.<sup>26</sup> The Student's Individualized Family Service Plan ("IFSP") goal was to use 2–3-word phrases to express herself in all situations and different environments.<sup>27</sup>
2. On January 9, 2023 (Student 2 years, 3 months old), the Early Intervention service coordinator<sup>28</sup> contacted KM (who was the District's Director of Student Services at the time)<sup>29</sup> requesting to schedule a transition meeting for the Student and indicating "Mom

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<sup>22</sup> Personally identifiable information is in Exhibit "A".

<sup>23</sup> Personally identifiable information is in Exhibit "A".

<sup>24</sup> JE2-17 and JE4-115

<sup>25</sup> JE2-17.

<sup>26</sup> Illinois Early Intervention Speech Language therapy discharge report dated 9/8/2023. SD3-24, JE2-17, and Mother's testimony and JE4-115.

<sup>27</sup> Illinois Early Intervention Discharge Report. SD 3-25

<sup>28</sup> The Service coordinator did not testify.

<sup>29</sup> Personally identifiable information is in Exhibit A.

is anxious to get the transition in.”<sup>30</sup> The transition meeting was held on February 10, 2023.<sup>31</sup>

3. On February 13, 2023, Mother emailed KM expressing her concern that the District does not want to start the Student’s transition process immediately... and expressing the concern that it is “extremely important for [Student] and our family to confirm her educational plan.”<sup>32</sup> Parent concludes: “[Student] is already 2 years and 4 months old, therefore, we’re exactly in the normal time to start conducting the transition plan soon.”<sup>33</sup> On February 15, 2023, KM responded by email explaining: “Given that there are 7 ½ months until [Student] turns 3 and [Student] will likely make a lot of progress we are not comfortable evaluating [Student] this early.”<sup>34</sup> On February 16, 2023, Mother emailed her concerns alleging the District is not following the law “the broadest timeframe for conducting the transition planning conference begins from 2 years 3 months, and [Student] is already 2 years 4 months so we’re eligible to request to start conducting the process now.”<sup>35</sup> On February 22, 2023, KM responded explaining the law requires that the District have the evaluation and IEP completed prior to a student’s third birthday, and that the Parents have misinterpreted the timeframes applicable to transition planning (which has occurred) as timeframes for the evaluations for IEP services.<sup>36</sup> However, based on the Parents’ concerns, the District has agreed to move the evaluation to the summer.”<sup>37</sup>

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<sup>30</sup> JE3-53.

<sup>31</sup> JE3-57.

<sup>32</sup> JE3-63

<sup>33</sup> JE3-63.

<sup>34</sup> JE3-64.

<sup>35</sup> JE3-65.

<sup>36</sup> KM testimony and JE3-67.

<sup>37</sup> JE3-67 and KM testimony.

4. The District's February 27, 2023, explains that, based upon Mother's concerns, the evaluation would move to the spring and the District recommends a bilingual evaluator.<sup>38</sup>
5. Mother testified, for the family's convenience, she did not want a summer evaluation.<sup>39</sup>
6. Student lives with her Parents, older brother, and grandmother. "[Student] is exposed to English about 85% of the time and Chinese about 15% of the time in a typical day."<sup>40</sup> All Student's books and activities are in English.<sup>41</sup>
7. On March 13, 2023, the service coordinator for Student's EI services provided an updated report to the District.<sup>42</sup>

### **DOMAIN MEETING**

8. The Student's domain meeting was held on April 14, 2023.<sup>43</sup> The School Psychologist ("HN") lead the meeting. The identification of needed assessments provides existing information about the Student, and specifically references the Student's EI evaluation and March update listing concerns reported in early intervention.<sup>44</sup>
9. AH participated in the Domain meeting. Prior to the meeting she reviewed Student's EI reports from Student's initial assessment in December and an update in March 2023.<sup>45</sup> At the domain meeting she gathered information from the Parent to assist her in determining what domains to use for the evaluation.<sup>46</sup>
10. The District made several recommendations that Student receive a bilingual evaluation.<sup>47</sup> HN recommended a bilingual evaluation because Student was exposed to more than one language at home. In HN's professional opinion, a bilingual evaluation

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<sup>38</sup> KM testimony and JE 69.

<sup>39</sup> Mother testimony.

<sup>40</sup> JE2-17.

<sup>41</sup> Mother testimony.

<sup>42</sup> JE3-70 and JE3-74.

<sup>43</sup> Stipulation of Fact 4.

<sup>44</sup> Testimony of HN and JE1 (2-5).

<sup>45</sup> Testimony of AH speech language pathologist.

<sup>46</sup> Testimony of AH speech language pathologist.

<sup>47</sup> Mother, HN-School Psychologist, Speech Language Pathologist testimony. JE2-14, JE2-16, JE2-38.

should always be considered for a student who speaks more than one language, and it is the District's practice to consider a bilingual evaluation for any student who speaks more than one language at home. A bilingual evaluation is necessary to determine if an early language delay is present and ascertain whether student is not interacting with peers due to a language issue for another reason.<sup>48</sup> The Parents refused to allow Student to participate in a bilingual evaluation.<sup>49</sup> Mother refused to consent to a bilingual language evaluation.<sup>50</sup>

11. The Mother and District representatives reviewed Student's EI assessment and 3-month EI report<sup>51</sup> then the team discussed the identification of needed assessments.<sup>52</sup> Although the EI assessment showed zero (0%) percent delay in cognitive development,<sup>53</sup> a fifteen (15%) percent delay in gross motor skills,<sup>54</sup> and a nine (9%) percent delay in social emotional development,<sup>55</sup> based upon the Parents reported concerns in these areas,<sup>56</sup> the District agreed to open domains in these areas.
12. Despite the District's concerns about the validity of an English only evaluation, Domains were opened in cognitive functioning, communication status, hearing/vision, motor abilities, and social/emotional status.<sup>57</sup> The evaluations relevant to this due process case are cognitive functioning, communication status, and social emotional status.
13. On April 17, 2023, HN provided Mother with the domain paperwork, domain meeting notes, and a copy of the parent rights. HN provided a second copy to the Mother by

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<sup>48</sup> Testimony of School Psychologist.

<sup>49</sup> Mother testimony. JE 1-(6-7)

<sup>50</sup> JE 1-(6-7)

<sup>51</sup> Throughout the documents, it refers to Student's 6-month update, however, it is clear that Student did not begin to receive services until December 2022, so the March 2023 update would be a 3 month update. No June EI update was presented during the hearing

<sup>52</sup> Testimony of school psychologist and JT-1.

<sup>53</sup> School Psychologist testimony and Je1-2 and 1-6.

<sup>54</sup> School Psychologist testimony and JE1-4.

<sup>55</sup> School Psychologist testimony and JE1-4-5

<sup>56</sup> JE1-2 and JE1-6. School Psychology testimony.

<sup>57</sup> Testimony of school psychologist and JE 1-(2-5)

email on April 18, 2023.<sup>58</sup> The Student's initial consent for evaluation was signed on April 21, 2023.<sup>59</sup>

### **THE EVALUATION**

14. The Student's evaluation was conducted using transdisciplinary play-based assessments ("TPBA"), feedback from parents, and direct observation.<sup>60</sup> TPBA was chosen because it is best practice to look at young students in their most natural setting-play, and it is difficult to use a more formalized measure with children this age.<sup>61</sup> The results of the TPBA assessment should be interpreted with caution because the District recommended a bilingual evaluation to assess [Student's] language development in both English and Chinese (Mandarin) and the parents have declined to have the District utilize a bilingual evaluator.<sup>62</sup>
15. The TPBA should be conducted as close to three years of age as possible, to allow for the period of rapid development between two and one-half and three years of age. To provide a student with proper services, it is critical that the most current information be obtained.<sup>63</sup>
16. The TPBA testing took place across two dates, April 21, and May 1, 2023.<sup>64</sup> Initially the TPBA was completed on April 21, 2023, and no significant concerns about social development were noted, however, based on the significant concerns reported by the Mother and voiced at the domain meeting,<sup>65</sup> the District scheduled an additional observation date.<sup>66</sup> TPBA is not normally conducted with peers, but to observe Student's

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<sup>58</sup> Testimony of School Psychologist and JE3-83-84.

<sup>59</sup> Stipulation of Fact #5.

<sup>60</sup> HN testimony.

<sup>61</sup> Testimony of HN School Psychologist.

<sup>62</sup> School Psychologist testimony and JE2-16.

<sup>63</sup> School Psychologist testimony.

<sup>64</sup> Stipulation of Fact #6.

<sup>65</sup> JE2-21.

<sup>66</sup> School Psychologist testimony.

communication and social interaction around peers, on the second assessment date, the District invited Student to the blended preschool classroom.<sup>67</sup>

- a. The District created an environment, for the TPBA, to assess multiple skills, allowing Student to engage in different play activities with a facilitator present. The related services providers were also present. Parent was in the room for part of the assessment. CF<sup>68</sup> the blended preschool teacher facilitated the evaluation.

17. HN is the school psychologist for the District preschool and middle school. She is an Illinois licensed school psychologist. She has a bachelor's degree in child development, and a Master's Degree in school psychology. She has worked in the District for nine years, and prior to that she was in another district for three years. She conducts case study evaluations for preschool/middle school, provides MTSS support, and crisis response. HN's testimony is credible and persuasive.<sup>69</sup>

- b. HN assessed Student's cognitive and social emotional skills.
- c. Cognitive assessments<sup>70</sup> look at attention, memory, problem solving, social cognition, complexity of play, social knowledge, and literacy.
  1. Attention skills: HN found no concerns with Student's attention skills. The Student displayed age-appropriate attention to toys and activities for five or more minutes at a time, and persevered figuring out how to use a toy when she was unsuccessful at a first attempt. The Student looked at books independently, and with the facilitator, she was able to answer questions about pictures in the

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<sup>67</sup> JE2-18 and JE3-87.

<sup>68</sup> Personally identifiable information is in Exhibit "A".

<sup>69</sup> School Psychologist testimony.

<sup>70</sup> The EI assessment in December 2022 shows a 0% delay in cognitive development. JE2-18.

books. Student independently cleaned up.<sup>71</sup> This testimony was verified by CF who determined Student had strong attention skills and was not distracted by other things going on in the classroom.<sup>72</sup> This finding contradicts Mother's report that Student had an attention span from one to three minutes.<sup>73</sup>

2. Memory: HN found Student was able to recognize familiar pictures, books, sounds of animals, search for toys using strategy, and follow directions. Neither Mother nor HN reported concerns with Student's memory.<sup>74</sup>
3. Problem solving: HN testified Student would fully investigate toys and boxes in the classroom, she would try new strategies, and after prompting would model play from the facilitator. HN had no concerns. Mother reported Student can solve problems with help.<sup>75</sup>
4. Social cognition: HN reported Student would follow directions, ask for help, requested toys, labeled emotions of others in a picture book, and showed empathy for others. HN testified Student's skills showed a 0-20% delay, which she did not find concerning because a significant delay is considered 30% or greater for special education services. HN explained several factors can impact social cognition: 1) Student's age because social cognition is language dependent and at 30 months of age students do not

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<sup>71</sup> JE2-18.

<sup>72</sup> Testimony of CF preschool teacher.

<sup>73</sup> JE2-18.

<sup>74</sup> HN testimony and JE2-19.

<sup>75</sup> JE2-19 and HN testimony.

always have the necessary expressive language skills; and 2) a child's comfortability can impact the assessment especially around unfamiliar places and adults. Considering these factors, HN looked at how intense the Student's behavior was and whether it persisted. HN found the Student's did become comfortable in the environment.<sup>76</sup> Mother reported Student can read and respond to facial expressions of some family and friends.<sup>77</sup>

5. Complexity of Play: HN had no concerns about the Complexity of Student's play, as she engaged in a variety of activities in almost every area of the classroom and engaged in a multi-step play sequence when playing with a baby doll.<sup>78</sup>
6. Conceptual knowledge. Neither HN nor Mother had concerns, Student showed beginning counting skills, recognition of colors/shapes/sizes<sup>79</sup>
7. Literacy: HN explained when looking at a young student's literacy skills she is looking at how they engage with books. HN found Student would flip through the pages of the book, correctly orient the book, listen to and answer questions about the book. However, the Student did not engage in some language-based tasks such as filling in words in familiar texts and protesting when someone misreads a passage. Student's skills fell in the 24–30-month range, however HN noted the Student's skills are likely impacted by age and expressive language skills, therefore

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<sup>76</sup> School Psychologist testimony.

<sup>77</sup> JE2-19.

<sup>78</sup> JE2-19-20 and School psychologist testimony.

<sup>79</sup> JE2-20 and School Psychologist.

Student's delay of 0-20% is not concerning, and does not reach the standard of a 30% special education delay.<sup>80</sup>

8. The results of the Cognitive portion of the TPBA demonstrated most of Student's skills were solidly at the thirty-month level and others were between twenty-four and thirty months. A peer age comparison is used to determine whether Student's skills are typical of other students the same age and whether this is an area of delay or part of the progression of normal development. Student shows a 0-20% delay in social cognition (24-30 month) and a 0-20% delay in Literacy (24-30 months).<sup>81</sup> HN explained since there is such rapid development in the under 3 age group, typically anything under 30% is considered normal and a student will catch up without intervention. If a student is exhibiting a 30% or greater delay Student may qualify for special education services.<sup>82</sup>

- B. HN testified the Social Emotional domain looks at a student's emotional expression, ability to regulate emotions, regulate behaviors, sense of self, emotional themes, and social interactions. EI noted the Student displayed a nine percent delay in Social Emotional, which is considered within normal development. The results of the 2023 evaluations were impacted because Student wore a mask so facial expressions could not be observed.

1. Emotional Expression. HN noted the Student was initially hesitant to enter the unfamiliar classroom with unfamiliar adults. Mother walked Student into the classroom and helped her remove her

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<sup>80</sup> JE2-20 and School Psychologist.

<sup>81</sup> JE2-21 and School Psychologist.

<sup>82</sup> School Psychologist testimony.

coat. Once Student was handed a toy from the facilitator she was more at ease and able to separate relatively easily from her Mother.<sup>83</sup> Student was calm and regulated, transitioned easily between play, and left easily and waved good-bye. This observation confirmed Mother's report that the Student has some difficulty adapting to new situations, routines, or people,<sup>84</sup> however after acclimating to the classroom Student appeared to be happy. HN had no concerns.<sup>85</sup>

2. Behavioral Regulation. Neither HN nor Mother had concerns regarding behavioral regulation.
3. Sense of self. Although Mother told the District Student wants to be independent but needs a lot of help.<sup>86</sup> HN has no concerns finding that Student knew her name, identified body parts, exercised independence, explored toys attempted to problem solve and accepted help, even with an unfamiliar adult.<sup>87</sup>
4. Neither HN nor the Mother expressed concerns regarding Emotional Themes in Play.
5. Social Emotional Development/ Interactions, during the April TPBA evaluation, Student referenced the play facilitator, engaged in both independent and directed play, and engaged in back and forth play with a ball. However, based upon Mother's reports that the Student can be uncomfortable around peers,<sup>88</sup> the second

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<sup>83</sup> JE2-28 and School Psychologist.

<sup>84</sup> JE2-28-29.

<sup>85</sup> School Psychologist testimony and JE2-28-29

<sup>86</sup> JE2-30.

<sup>87</sup> School Psychologist testimony.

<sup>88</sup> Mother Testimony.

classroom observation was held. During the observation, Student was seen in parallel play for a period playing near others but not integrating her play. Student then transitioned to pretend play. HN has no concerns, stating this behavior is typical of children Student's age.<sup>89</sup> CF verified HN's observations that once Student transitioned away from the Mother, she was able to engage with an unfamiliar adult, express her own needs, and show good social skills in the classroom.<sup>90</sup> The TPBA assessments in Social Emotional Development showed Zero percent delay across all areas.<sup>91</sup>

18. HN acknowledged for all children, participating in cooperative play is helpful for social and emotional development, but cautioned students at the age of 2 ½ are not expected to engage in cooperative play with others and are not expected to solve social conflict with peers. This is not a developmental milestone at 2 ½ years old.<sup>92</sup>
19. The District Speech-Language Pathologist ("AH") is an Illinois licensed Speech-language pathologist. She has a bachelor's degree in speech/hearing science, and a Master's Degree in speech/language pathology. She has worked in the District for sixteen years, twelve of those years solely in the preschool, prior to that she was in another district for three years. She participates in assessments and treatment for children with speech language needs. AH's testimony is credible and persuasive.<sup>93</sup>

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<sup>89</sup> HN testimony.

<sup>90</sup> Preschool teacher testimony.

<sup>91</sup> JE2-31.

<sup>92</sup> Testimony of HN school psychologist.

<sup>93</sup> Testimony of AH speech language pathologist.

20. AH agreed with the use of the TPBA assessment.<sup>94</sup> AH participated in the TPBA assessment and conducted the Student's initial preschool communication evaluation.<sup>95</sup> AH's would have preferred to do the evaluation when the Student was closer to three years old because children are growing rapidly during this period, and you want an accurate representation of their skills.<sup>96</sup>
21. AH recommended Student be evaluated with a bilingual speech pathologist because when a student is exposed to two languages in the home, it is considered best practice to determine [Student's] language development in both languages. AH testified the failure to use a bilingual evaluation would not provide an accurate picture of a student's complete language skill,<sup>97</sup> explaining, pragmatics are culturally different, and a bilingual assessment allows you to distinguish between a language delay and a developmental language disorder. AH noted the failure to provide a bilingual evaluation will likely impact the validity of the evaluation and can result in a misinterpretation of the results.<sup>98</sup> Testing was conducted in English only and parent was consulted on Student's language history and skills in Chinese.<sup>99</sup>
22. Student's communication skills were assessed through a record review, parent report/questionnaires, play-based assessment, preschool classroom observation, and formal testing of vocabulary skills.<sup>100</sup> In addition to participating in the TPBA, AH also used the Receptive one-word Picture Vocabulary Test, 4<sup>th</sup> edition, (ROWPVT-4) and the Expressive One Word Picture Vocabulary Test. 4<sup>th</sup> edition, ("EOWPVT-4").<sup>101</sup>

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<sup>94</sup> Testimony of AH speech language pathologist.

<sup>95</sup> Testimony of AH speech language pathologist.

<sup>96</sup> Testimony of AH speech/language pathologist.

<sup>97</sup> Testimony of AH speech language pathologist who explained a student may only know 20 words of English but may know many words in the primary language spoken in the home.

<sup>98</sup> Testimony of AH speech language pathologist. JE 2-14, 2-16,

<sup>99</sup> JE2-31 and JE2-38

<sup>100</sup> AH testimony and Je2-14.

<sup>101</sup> JE2-16

23. Both the ROWPVT-4 and the EOWPVT-4 are individually administered, norm referenced assessments of how well persons ages 2 year to over 80 can point to a picture of a word (given multiple choices) heard in English (receptive) or can name (expressive) in English the objects, action or concepts presented in full color pictures.<sup>102</sup>
24. The results of the ROWPVT-4 show that Student obtained a standard score of 90, which fell within the average range, solidly at the 24-month-old age level with a few scattered skills emerging in the 30- and 36-month age level. Student demonstrated an understanding of many common objects (e.g., chair, hat, clock) and an emerging ability to identify actions and body parts in pictures.<sup>103</sup>
- a. During the TPBA, in receptive comprehension, Student exhibited growth and was able to follow directions, understood age-appropriate concepts and responded to yes/no questions, exhibiting a twenty-20 percent delay, which is within the average range.<sup>104</sup>
25. The Student's expressive language assessment in the December 1, 2022, EI evaluation indicated that Student demonstrated a 52% delay in Language Expression, with skills at the 12-month age level. AH testified that typically with early intervention speech service, and providing information about modeling to parents, you see quite a bit of progress at Student's age.
- a. The results of the EOWPVT-4 show Student obtained a standard score of 85, which fell within the average range, although on the low end of average.<sup>105</sup> The Student named several common items in pictures (e.g., phone, apple, scissors.) The Student was given the prompt in a few instances when her response was either too specific or too general and asked to repeat herself due to speaking

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<sup>102</sup> AH testimony and JE-22.

<sup>103</sup> JE2-22.

<sup>104</sup> Testimony of AH and JE2-14.

<sup>105</sup> AH testimony and JE2-23-24.

quietly while wearing a mask.<sup>106</sup>

- b. AH is careful to not overidentify students who are shy because they do not exhibit as much expressive language in unfamiliar locations with unfamiliar persons.
- c. During the TPBA, in expressive language, Student primarily communicated with eye gaze, body language, gestures/pointing, and verbalizations. Student was observed to use single words but did produce a few 2-word utterances and even a 3-word utterance. The length of the utterance is indicative of age.<sup>107</sup> The Student was able to imitate a few 2-word utterances when prompted and given a model by the teacher. Student named many familiar objects/pictures, some action words, some colors/shapes, made some animal sounds and produced more than 50 different single word spontaneously.<sup>108</sup>

26. Pragmatic Language Skills refer to the ability to use verbal and nonverbal communication skills to interact with others and communicate for a variety of purposes.<sup>109</sup> AH assessed AH assessed Student's Pragmatic/Social Language skills during the TPBA. The Student demonstrated good eye-contact, appeared shy and only initiated verbally a few times (e.g., to label/comment, ask for help, to request the bathroom).<sup>110</sup> These skills presented at a thirty (30%) percent delay, and AH noted Student was uncomfortable at times and it took her time to warm up and speak a louder, which did eventually take place.<sup>111</sup> AH considered these factors when determining this delay was very mild or borderline, and she did not any concerns when considering the totality of the assessment.<sup>112</sup>

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<sup>106</sup> AH testimony and JE2-24.

<sup>107</sup> AH testimony.

<sup>108</sup> JE 2-23

<sup>109</sup> JE2-24.

<sup>110</sup> JE2-25.

<sup>111</sup> Speech Pathologist testimony and JE2-25.

<sup>112</sup> AH testimony.

- a. Obtaining information from the Parents is critical to determine what skills the Student exhibits at home<sup>113</sup> The Mother completed a Language Use Inventory (“LUI”), which is a standardized parent report measuring early language use and pragmatic language skills within the home/family environment.<sup>114</sup> The report was completed on April 22, 2023.<sup>115</sup> The results of the LUI assessment indicate Student’s skills fell in the less than first (1%) percentile which indicates a significantly below average performance.<sup>116</sup> This is a drastic difference from the District findings.<sup>117</sup>
- b. AH gave due consideration to her findings and the results of the LUI, AH found the totality of the assessments indicate a very mild or borderline speech-language delay in pragmatic language.<sup>118</sup> AH concluded Student’s pragmatic language skills fell solidly at the 21-month-old age level, however, given Student’s shyness and comfort levels, and the short amount of time allocated for the assessment,<sup>119</sup> Student demonstrated many appropriate nonverbal communication skills during the assessment, initial verbal communication in a few instances, and often requested items when given a verbal prompt.<sup>120</sup>

27. AH assessed Student’s articulation and oral motor skills, these are the child’s ability to produce speech sounds and represent the sound to produce intelligible speech. This was assessed using record review.<sup>121</sup> There were no concerns with Student’s articulation and oral motor skills.<sup>122</sup>

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<sup>113</sup> Speech Pathologist testimony.

<sup>114</sup> AH testimony.

<sup>115</sup> JE2-25.

<sup>116</sup> JE2-25 and AH testimony.

<sup>117</sup> AH testimony and JE2-25.

<sup>118</sup> JE2-32.

<sup>119</sup> JE2-25-26.

<sup>120</sup> JE2-26.

<sup>121</sup> Testimony of Speech Pathologist.

<sup>122</sup> AH testimony.

### Eligibility meeting and IEP

28. Student's Initial eligibility and IEP meeting was convened May 22, 2023.<sup>123</sup> Present at the meeting were the Mother, KM,<sup>124</sup> CF, AH, and an occupational therapist. HN was present and led the discussion about special education services.<sup>125</sup> No one from EI was present.

- a. HN reviewed her findings in the areas of Social Emotional/Behavior and Cognitive development, determining Student did not demonstrate significant delays in her overall social and emotional functioning,<sup>126</sup> or Cognitive Development when it came to same age peers.<sup>127</sup> Student was initially hesitant to enter the classroom but did warm up and was able to engage. Student was observed to stay regulated, share toys with others, joined the students during play, engage in parallel play (typical of children her age). [Student's] sense of self was age appropriate.<sup>128</sup> The Mother did not voice any concerns about these evaluations.<sup>129</sup>
- b. AH reviewed her findings that Student had a mild delay in expressive and pragmatic language.<sup>130</sup> AH assisted the team in considering the Parent's report, the updated EI assessment and ultimately determining the Student would be eligible for IEP services under speech/language. Mother did not express any concerns about this determination.<sup>131</sup>

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<sup>123</sup> Stipulation of Fact #7.

<sup>124</sup> Identified in Exhibit "a"

<sup>125</sup> Stipulation of Fact #8.

<sup>126</sup> HN testimony and JE2-38.

<sup>127</sup> School Psychologist testimony and JE2-31.

<sup>128</sup> School Psychologist testimony and JE2-48.

<sup>129</sup> School Psychologist testimony.

<sup>130</sup> Speech-Language Pathologist testimony and JE2-(22-26).

<sup>131</sup> AH testimony and JE2-33.

- c. CF agreed with the team’s recommendation that Student be found eligible for IEP service under speech/language.<sup>132</sup>
  - d. Mother reiterated the concerns expressed at the Domain meeting about Student’s social skills.<sup>133</sup>
29. AH assisted the team in drafting Student’s singular goal to address Student’s deficits in expression and pragmatics. AH cautioned “it is difficult to predict Student’s performance and growth for the goal because her baseline was gathered at 2.5 years and services will not start until Student turns 3.<sup>134</sup> The goal requires Student to use 3-word utterances during structured language activities in 80% of charted opportunities by May 21, 2024. This is a yearlong goal.<sup>135</sup>
- a. Benchmark/Short term objectives begin with consistently using 2-word utterances by 11/22/2023, 2–3-word utterances by 3/20/2024 and finally achieving the goal.
  - b. The team determined Student would need 30 minutes per week of speech/language itinerant services to meet her short-term objectives and the yearlong goal.<sup>136</sup>
  - c. Parent disagreed with the team’s goal questioning why peers are not included in the goal.<sup>137</sup> stating “Student needs help communicating with other children and the LRE requires Student to receive the services in the classroom with her peers.”<sup>138</sup>
  - d. The team explained “the expectation is that Student will first need to demonstrate the skills with an adult and then once she has the skills she will generalize the skills.”<sup>139</sup>

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<sup>132</sup> CF testimony.

<sup>133</sup> Mother testimony and JE2-49.

<sup>134</sup> AH testimony and JE2-49.

<sup>135</sup> AH testimony and JE 2-40.

<sup>136</sup> Speech pathologist testimony.

<sup>137</sup> JE2-49.

<sup>138</sup> JE2-49.

<sup>139</sup> AH testimony and JE2-49.

30. The team discussed Student's least restrictive environment ("LRE").

- a. The team determined Student should receive 30 minutes per week of speech itinerant services (speech only services),<sup>140</sup> based upon Student having a mild/moderate speech language delay and having no other delays or deficits that would require specialized instruction services.<sup>141</sup>
- b. This placement was determined so Student's expressive language and pragmatics delay would be addressed directly with the speech pathologist.<sup>142</sup>
- c. In an attempt to work within the limited range of the standardized IEP format page, the District specified "[Student] requires itinerant speech-language services in the speech therapy room to directly address her delays in expressive language and social pragmatic language. [Student] is not placed in the preschool and is not removed from classes."<sup>143</sup>

31. The blended preschool teacher ("CF")<sup>144</sup> credible testimony confirmed that preschool student's wants and needs at age three (3) are communicated to adults first before being generalized with peers, and that students are not yet interacting with each other, but prefer parallel play.<sup>145</sup>

32. The District provides a continuum of preschool placement options. Speech/language education services are stand-alone services, where a speech/language pathologist can be the sole provider, this makes speech/language services unique. A Student requiring only speech/language services would not require a placement in a classroom unless additional special education services were required. The least restrictive environment for

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<sup>140</sup> AH testimony and 2-46.

<sup>141</sup> Testimony of HN.

<sup>142</sup> Speech Language testimony.

<sup>143</sup> Director Testimony and JE 2-46.

<sup>144</sup> CF has a degree in early childhood, special ed and reading, a master's in educational leadership, a full learning behavior specialist degree and an esl certificate. This is CF's 19<sup>th</sup> year teaching.

<sup>145</sup> CF testimony.

a speech/language IEP student would be in the district's walk-in services office.<sup>146</sup>

- a. CF agreed with the team's recommendation for placement for speech itinerant services at the speech pathologist's office, credibly testifying that she would not recommend Student be placed in the blended setting unless she exhibited delays in more than one area and would need assistance accessing the preschool curriculum.<sup>147</sup>
- b. Mother disagreed with the teams recommended placement to be speech itinerant services. Mother told the team the least restrictive environment requires Student to receive the services in a classroom with peers.<sup>148</sup>

### **POST IEP MEETING**

33. Parent filed a State Complaint on June 5, 2023, alleging, in part, that the District failed to consider parental input on what constitutes an appropriate LRE for the Student and whether the delivery model for speech services would appropriately meet the Student's needs.<sup>149</sup> The State Complaint concluded on August 3, 2023 and required no corrective action from the District.<sup>150</sup>
34. The Parents enrolled the Student in the District's A.M. blended preschool classroom following the decision on the State Complaint. The Parents paid the deposit, but not the tuition.<sup>151</sup>
35. Student was discharged from Early Intervention. The EI Discharge Report ("Discharge Report") dated September 8, 2023 found:
  - a. "During structured table activities [Student's] expressive language is minimal with predominately gestures or 1-word responses as well as limited verbal initiations.

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<sup>146</sup> Director Testimony.

<sup>147</sup> CF testimony.

<sup>148</sup> Mother's testimony and JE2-49.

<sup>149</sup> JE4-(105-106)

<sup>150</sup> JE4-160.

<sup>151</sup> Mother's testimony.

- Increased language flexibility and man length of utterance is noted while engaged in unstructured language-based play activities. [Student] recently has started to share her experiences she has had throughout the day.”
- b. [Student’s] ability to fluently ask and answer a variety of WH questions such as who, what, where, when and how is emerging nicely when she is comfortable in her environment.
  - c. [Student] is now able to move from holistic phrases such as “I did it” or “Where are you” to more novel, flexible and functional language. At present, she can express herself with an average of 3–4-word sentences utilizing a variety of age-appropriate nouns, pronouns, prepositions, negatives, and plurals. Emerging skills noted for more complex verbal requests. [Student is able to demonstrate beautiful imagination in her play schemes as well as excellent concentration for high level cognitive tasks.
  - d. [Student’s] expressive and receptive skills appear to be following a typical pattern of development and are emerging nicely.<sup>152</sup>
36. The Discharge Report specifies Student is able to “express herself with an average of 3-4 word sentences utilizing a variety of age appropriate nouns, verbs, pronouns, prepositions, negatives, and plurals. Emerging skills noted for more complex verbal requests.”<sup>153</sup> It appears that Student has met the long-term goal drafted in the May 2023 IEP which was to complete in May 2024.<sup>154</sup>
37. Following Student’s discharge from Early Intervention Services, Student never attended the itinerant speech/language services provided in the May 2022 IEP.

### **DISTRICT PRESCHOOL**

38. The District provides online registration for District preschool services.<sup>155</sup> Student’s

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<sup>152</sup> Illinois Early intervention Speech Language therapy discharge report dated 9/8/2023. SD3-25.

<sup>153</sup> SD3-25.

<sup>154</sup> Speech Pathologist testimony.

<sup>155</sup> Director testimony.

parents have properly enrolled Student, and the District is holding a position open in the blended classroom. The District does not offer no cost preschool to all students, and it is not required by Illinois law.<sup>156</sup>

39. The Blended preschool program consists of two classes (AM/PM), there are 13 students in the AM class and 6 in the PM class, 5 of the students have IEPs. The IEP students have a variety of needs; significant speech and articulation issues which impede their ability to communicate wants and needs; extremely limited communication (mostly nonverbal who need modeling to repeat language; regulation difficulties; student who need help with transitions; students who need visuals; and a scripted language student who needs a visual. There is a teacher assistant present 100% of the day, and related service provider who come in and out of the classroom.<sup>157</sup>

40. The Student has not attended the preschool program.

### **CONCLUSIONS OF LAW**

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

### **BURDEN OF PROOF**

In *Shaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed. 2<sup>nd</sup> 387 (2005), the United States Supreme Court affirmed a decision that allocated the burden of proving the effectiveness of a student's IEP to the party challenging the IEP. The Court was silent on whether the states could override the rule with specific statutory language. Therefore, in this matter, the parents have the burden of proof. However, in Illinois, school districts have a statutory obligation to

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<sup>156</sup> Director Testimony.

<sup>157</sup> Testimony of CF blended preschool teacher.

present evidence that “that it has properly identified and evaluated the nature and severity of the student’s suspected or identified disability and that, if the student has been...determined eligible for special education and related services, that [the district] is providing or has offered a free appropriate public education to the student in the least restrictive environment.” 105 ILCS 5/14-8.02a(g-55). This statute only requires the district to present evidence that the needs of the child have been appropriately identified and does not shift the burden of proof from the parent.

**FREE APPROPRIATE PUBLIC EDUCATION IN THE  
LEAST RESTRICTIVE ENVIRONMENT PARENT ISSUES 1 AND 4.**

In *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386, 137 S. Ct. 988, 197 L. Ed 335, (2017), the Court clarified the FAPE standard, stating “The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials, informed by their own expertise and the views of the child’s parents, any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal...the degree of progress contemplated by the IEP must be appropriate in light of the child’s circumstances.” pp 991-993.

Each state is required to have procedures which ensure that a continuum of alternative placements are available to meet the needs of children with disabilities for special education and related services. 34 C.F.R §300.115.

Parents argue that the District failed to adhere to the least restrictive environment (“LRE”) requirements of the IDEA citing 34 C.F.R.§ 116(a), which specifies: “In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that-(a) The placement decision- (1) is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and is made in conformity the LRE provisions of this subpart. Further, Parents contend the District failed to follow its own guidelines set forth

in its Community Preschool Handbook:<sup>158</sup> that all children can thrive in an appropriate preschool classroom; that services for special education and/or speech language disorders should be provided services in the typical education setting as much as possible, provide opportunities for peer interactions, integrate interventions within a classroom curriculum to allow the generalization of new skills, and bring related services to the child rather than taking the child to a separate treatment room.<sup>159</sup>

Parents maintain that the District's placement for Student in the May 2023 IEP is a violation of Student's LRE, and for the Student to benefit from the services provided in her IEP, she must be able to learn to generalize those skills in the blended preschool classroom, so she must be placed in the District classroom at District expense.

In Response, the District argued that it has a continuum of preschool placement options to meet the needs of students with disabilities, those options were considered at an IEP meeting, and Student's LRE was determined to be itinerant services outside of the preschool classroom. The District recognizes the value of preschool education for all students, Parents registered the Student and the District is holding a position for Student in the preschool classroom, but Student does not require placement in a preschool classroom to receive her IEP service, and the District has no obligation to provide free preschool to the Student.

The testimony and documentary evidence introduced at the hearing is uncontroverted by the Parents. In fact, the only testimony presented that Student required a placement in a blended preschool classroom to receive FAPE in her LRE was the Mother's testimony. The hearing testimony is clear, the team, Mother included, met on May 22, 2023.<sup>160</sup> The team considered the

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<sup>158</sup> Parent Ex. 1.

<sup>159</sup> Parent Ex. 1.

<sup>160</sup> FOF 29.

validity of the evaluations based on the concerns about Student's age,<sup>161</sup> bilingual home,<sup>162</sup> and Parents refusal of a bilingual evaluation.<sup>163</sup> Student's EI records, the District evaluations, and Mother's concerns were reviewed and considered.<sup>164</sup> The team developed an IEP that included a singular goal to meet the Student's mild delay in expressive and pragmatic language.<sup>165</sup> The team determined Student needed 30 minutes per week of speech language services with a speech pathologist to meet the IEP goal.<sup>166</sup>

The testimony of the District witnesses, who were all members of Student's IEP team, was credible and persuasive. The testimony confirmed that Student did not require a placement in a preschool classroom to receive her IEP service.<sup>167</sup> The Student must first learn to communicate with adults before generalizing the skill with peers.<sup>168</sup> The District has a continuum of preschool placement options available.<sup>169</sup> Student's LRE was discussed, based on the Student's goal, and the time necessary to implement Student's goal, the team concluded the Student's mild/moderate speech language delay, could be best addressed in the District offices and to place Student in a classroom for one-half day five days per week to receive such limited service would violate Student's right to services in her LRE.<sup>170</sup>

Based upon the uncontroverted testimony and documentary evidence introduced at hearing, it is the finding of this Hearing Officer that the District provided the Student with an appropriate IEP on May 22, 2023, including itinerant speech/language services for 30 minutes per week in a District office, which is found to be Student's least restrictive environment and

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<sup>161</sup> FOF 3, 15, 17(c)(8).

<sup>162</sup> FOF 6.

<sup>163</sup> FOF 10, 12,14.

<sup>164</sup> FOF 11, FOF 29(d)

<sup>165</sup> FOF 29

<sup>166</sup> FOF 30a.

<sup>167</sup> FOF 27, FOF 30

<sup>168</sup> FOF 29, 31.

<sup>169</sup> FOF 32.

<sup>170</sup> FOF 30, FOF 32

provides her with a free and appropriate public education (FAPE). Parents' claims to the contrary are without merit.

**WHETHER THE DISTRICT FAILED TO CONSIDER THE EARLY INTERVENTION (“EI”) ASSESSMENT AND PARENT RECOMMENDATIONS IN DETERMINING STUDENT’S PLACEMENT (Issue 2)**

Parents contend that the District failed to consider the Student’s EI assessment and recommendations from Student’s EI speech pathologist when determining Student’s placement. The Student’s EI speech language pathologist did not testify during the hearing, and neither the Student’s December 2022 EI evaluation nor the March 2023 update were offered into evidence.<sup>171</sup>

The IDEA’s implementing regulations state that “[a]s part of an initial evaluation...the IEP Team...must 1) (i)[r]eview existing data on the child including: 1) evaluations and information provided by the parents; ii) current classroom-based, local or state assessments, and iii) observations by teachers and related services providers; and (2) on the basis of that review, and input from the child’s parents, identify what additional data, if any are needed to determine (i)(A) Whether the child is a child with a disability as defined in §300.8 and the educational needs of the child. 34 C.F.R. §300.305(a). An evaluation must assess a student in all areas related to the suspected disability and be sufficiently comprehensive to identify all of the Student’s special education and related service needs, whether or not linked to the disability category in which the child has been classified. 34 C.F.R. § 300.304(c).

The testimony and documentary evidence presented at hearing was clear and uncontroverted by the Parents. At the domain meeting for the Student’s initial preschool evaluation, the District team reviewed and considered Student’s December EI evaluation and

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<sup>171</sup> All information regarding Student’s EI evaluation was garnered from the Joint Exhibit JE-2 (May 2023 IEP) and District witness testimony.

the March 2023 progress update provided by Student's service provider.<sup>172</sup> The District speech pathologist specifically reviewed the EI reports prior to making recommendations to the team about which speech/language domains to consider for the evaluation.<sup>173</sup> The team gave great deference to the Parents reported concerns, and agreed to evaluate Student, even in domains where no deficits were noted in the EI evaluation.<sup>174</sup>

Despite the District's concerns that the evaluation was taking place too early to reliably provide information on Student's speech/language delay, the District reviewed all available data (although it was minimal) and provided an appropriate evaluation.<sup>175</sup> Ultimately, the Student's IEP placement was based on the findings of the evaluations identified during the domain meeting. As previously determined- no member of the team, with the exception of the Mother, voiced any concerns about Student's IEP goal or Student's placement in the speech language itinerant services.<sup>176</sup>

Therefore, based upon the testimony of the District's witnesses, and the documentary evidence, this Hearing Officer finds that the District did consider the Student's EI evaluation, and the Parent's recommendations prior to determining in which domains the Student would be evaluated. The results of the evaluations for all identified domains were considered at the IEP meeting, where Mother was present, and the Student's goal, the District's continuum of services, and LRE placement were considered.

**WHETHER THE DISTRICT FAILED TO PROPERLY CONSIDER ITS EVALUATION OF STUDENT'S SOCIAL EMOTIONAL DEVELOPMENT BECAUSE IT DID NOT GIVE ADEQUATE CONSIDERATION TO STUDENT'S RELUCTANCE TO INTERACT WITH OTHER STUDENT'S DURING THE MAY 2, 2023 ASSESSMENT.**

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<sup>172</sup> FOF 8, 9

<sup>173</sup> FOF 9, 11.

<sup>174</sup> FOF 11.

<sup>175</sup> FOF 28.

<sup>176</sup> FOF 28, FOF 29, FOF 30

When conducting an evaluation, the district must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child. 34 C.F.R. §300.304 (b)(1). The district must ensure that the assessments and other evaluation criteria are selected and administered so as not to be discriminatory on a racial or cultural basis; are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; are used for the purposes for which the assessments or measures, are valid and reliable; are administered by trained and knowledgeable personnel; and are administered in accordance with any instructions provided by the provider of such assessments. 34. C.F.R § 300.304(c). The Illinois school code identifies a “qualified professional” as an individual who holds credentials to evaluate the child in the domain or domains for which an evaluation is being sought. 105 ILCS 5/14-8.02(g)(5).

The District brought a variety of professionals together at Student’s domain meeting to review Student’s EI assessment and update and determine the domains for Student’s evaluation.<sup>177</sup> The District must be faulted for allowing the will of the Mother to override the District’s own professional’s opinion that the timing of the evaluation, when the Student was just thirty-months old, was too early to view developmental milestones that might be expected of a three-year-old and might impact the validity of the evaluation.<sup>178</sup> This is especially true after reviewing the EI discharge report showing that the IEP goal drafted in May 2023, has likely been met by the Student during EI.<sup>179</sup> There is no doubt that the District’s professionals, on multiple occasions, requested to provide Student with an evaluation in a language they believed would be most likely to provide them with accurate information.<sup>180</sup> The Speech Pathologist clearly

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<sup>177</sup> FOF 8.

<sup>178</sup> FOF 20

<sup>179</sup> FOF 35, FOF 36.

<sup>180</sup> FOF 21.

explained the importance of distinguishing between a language delay and a developmental language disorder in determining the services required to address a speech language issue.<sup>181</sup>The Mother's refusal to allow the bilingual evaluation, and to insist the evaluation take place earlier than recommended, may have undermined the evaluation process resulting in the District writing a goal, which appears to have been met prior to the Student's third birthday.

This IHO has not been provided with any updated information on the Student's current skills, the Student has not attended the District's preschool<sup>182</sup> and Parents have not brought the Student to the District to receive the speech itinerant services provided in the May IEP,<sup>183</sup> therefore the District has no current information regarding Student's speech language ability.<sup>184</sup> Parents did not provide any independent evaluations.

The uncontroverted testimony and evidence establish the District, except for the timing and failure to provide a bilingual evaluation, provided Student with all elements required for an evaluation under both 34. C.F.R § 300.304(c) and 105 ILCS 5/14-8.02(g)(5).<sup>185</sup> The District cannot be faulted for its genuine attempt to work with the Mother to provide the Student with the appropriate IEP services.

Although, Student's EI evaluation showed a minimal delay (9%) in social emotional development, based solely upon Parent's concerns, the District provided Student with a full social emotional development evaluation assessing Student's cognitive and social emotional skills. The evaluation was comprehensive and included an in-class observation. The evaluation took into consideration that a young child will be uncomfortable in unfamiliar locations with strangers, and that children at thirty-months old are not expected to engage in cooperative

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<sup>181</sup> FOF 10.

<sup>182</sup> FOF 37.

<sup>183</sup> FOF 40.

<sup>184</sup>

<sup>185</sup> FOF

play.<sup>186</sup> The District witnesses admitted Student was hesitant to enter an unfamiliar classroom with unfamiliar adults. However, the uncontroverted findings of fact demonstrate that once Student acclimated to the classroom, she was calm and regulated, able to engage with an unfamiliar adult, transitioned between activities, expressed her own needs, and appeared to be happy.<sup>187</sup>

Therefore, based upon the testimony of the District's witnesses, and the documentary evidence, this Hearing Officer finds that the District did appropriately evaluate Student in all areas of suspected disability. The District did consider the findings of the social-emotional skills evaluation and the Student's reluctance to enter into the classroom along with the opinions of its professionals on the impact of Student's comfortability and the effect of that on the Student's social emotional evaluation.

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

1. The Student's initial evaluation and May 22, 2023 IEP are determined to be appropriate.
2. Student's IEP placement to receive speech itinerant services at the Speech Pathologist's office is determined to be appropriate and is Student's least restrictive environment.
3. Student does not need a placement in a District preschool, at no cost to the Parents to have her IEP and goal appropriately implemented.
4. All relief sought by the Parents is hereby denied.

Dated: November 22, 2023

/S/Mary Jo Strusz  
Mary Jo Strusz, Impartial Hearing Officer

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<sup>186</sup> FOF 18.

<sup>187</sup> FOF 17(b)(5) and FOF 26.



**NOTICE OF RIGHT TO REQUEST CLARIFICATION**

Pursuant to 105 ILCS 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: November 22, 2023

/S/Mary Jo Strusz  
Mary Jo Strusz, Impartial Hearing Officer

Appendix "A"

WITNESS NAME	TITLE	ACRONYM
[REDACTED]	Mother	Mother/Parent
[REDACTED]	Speech Language Pathologist	AH
[REDACTED]	Psychologist	HN
[REDACTED]	Assistant Superintendent of Student Services/ Former Director of Student Services/	KN
[REDACTED]	Preschool Teacher	CF

CERTIFICATE OF SERVICE BY EMAIL AND  
CERTIFIED UNITED STATES POST OFFICE MAIL

I the undersigned, Mary Jo Strusz, certify that on November 22, 2023, a copy of the FINAL DETERMINATION AND ORDER, was served upon the following persons via email transmission by attached document in pdf format to the email addresses below and a copy of the printed document with original signatures were placed in the United States Postal Service, Certified Mail and address to the parties at the addresses below:

**District:**

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

**Parents:**

Caroline Roselli, Esq.  
Robbins, Schwartz, Nicholas Lifton & Taylor  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Illinois State Board of Education:**

Mr. Andy Eulass  
Due Process Coordinator  
100 N. First St.  
Springfield, IL 62777-0001  
AEulass@ISBE.net

November 22, 2023

/S/ Mary Jo Strusz  
Mary Jo Strusz, Impartial Hearing Officer  
[REDACTED]  
[REDACTED]  
[REDACTED]