

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

IN THE MATTER OF:

█, a minor, by and through
His/Her Parent,
Student/Petitioner

Case No. 2024-DP-0059

v.

█ Community Unit School District # █,
District/Respondent.

Mary Jo Strusz
Impartial Hearing Officer

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

Petitioner is the parent of █ ("Student"), a nine-year-old student, who is eligible for special education services under the disability category of Autism.

Petitioner filed a due process complaint against the District on October 11, 2023.¹ This Hearing Officer ("Strusz") was appointed to preside over the initial due process complaint on October 3, 2022.²

The Parent represented Student *pro-se*. For the majority of this case, the District was represented by Attorney Luis Rodriguez from Engler, Callaway, Baasten & Sruga LLC. Prior to filing his appearance on November 13, 2023, the District was represented by another Attorney.

The initial status conference was held on October 11, 2023, during the conference the Hearing Officer explained the prehearing disclosures and procedures, the prehearing was

¹ IHO Ex. 1

² IHO Ex. 3.

scheduled for November 14, 2023, with prehearing disclosures due November 10, 2023, the Notice of Prehearing Conference and Order was entered on October 11, 2023.³

The Parties failed to file prehearing disclosures, Rodriguez filed an appearance for the district,⁴ and the prehearing was rescheduled for January 5, 2024.⁵ A Joint Motion to extend the 45-day decision date was filed on November 16, 2024,⁶ and the Order extending the 45-day decision date to January 31, 2025, and rescheduling the prehearing conference for January 5, 2024 with disclosures on January 3, 2024, was entered on November 21, 2024.⁷ The Parties failed to file the required prehearing disclosures and the prehearing was rescheduled to January 23, 2024.⁸ On January 17, 2024, Parent requested to reschedule the prehearing conference, the Hearing Officer responded that it was possible, but the District would need to agree and a Motion to Extend the 45-day decision date would need to be filed.⁹ The District filed the Motion to extend the decision date to February 29, 2024,¹⁰ and an Order was entered on January 23, 2024 extending the decision date and rescheduling the Prehearing Conference to February 20, 2024, with disclosures on February 17, 2024.¹¹ No disclosures were filed by either Party.

On the morning of February 20, 2024, Parent sent an email requesting to reschedule, and the Hearing Officer denied the Parent's request.¹² The prehearing was heard as a status conference, the Parties agreed to extend the 45-day decision date to April 30, 2024, and selected a mandatory prehearing date of March 13, 2024, with disclosures due on March 11, 2024.¹³ The Motion for Continuance was filed on February 28, 2024,¹⁴ and the Order extending the decision

³ IHO Ex. 8

⁴ IHO Ex. 10

⁵ IHO Ex. 9

⁶ IHO Ex. 11.

⁷ IHO Ex. 12.

⁸ IHO Ex. 14, 15.

⁹ IHO Ex. 18.

¹⁰ IHO Ex. 19.

¹¹ IHO Ex. 20.

¹² IHO Ex. 22.

¹³ IHO Ex. 23.

¹⁴ IHO Ex. 24.

date and scheduling the mandatory prehearing conference/disclosure date was entered on February 29, 2024.¹⁵ The District filed the Prehearing Conference Disclosure on March 11, 2024.¹⁶ The Parent did not file disclosures and sent an email requesting a continuance to obtain an attorney, the Parent's request was denied.¹⁷

The initial Prehearing Conference was held on March 13, 2024, the Parent confirmed she had not retained an attorney, the Parties selected hearing dates for April 10 and 12, 2024, and the prehearing was continued to March 20, 2024, to complete issues and review the Parent's document disclosure and updated witness disclosure which were scheduled to be filed by March 18, 2024. The Order was entered on March 15, 2024.¹⁸ Parent's Prehearing Disclosures were filed late, on March 19, 2024, the witness list was complete, the document list was vague and provided no specificity, Parent also filed a "situational synopsis" which was nonresponsive to the prehearing conference but has been included in the record.¹⁹ On March 20, 2024, the prehearing proceeded and was completed. A status conference to finalize the prehearing report and order was scheduled for March 27, 2024, for Parent to provide clarification of the dates in the proposed issues, to answer any additional questions from the Parties regarding the April 3, 2024 hearing disclosures.²⁰ The Order was entered on March 21, 2024.²¹ The draft Prehearing Report and Order was provided on March 21, 2024.²² Parent filed a written request for Compensatory Education on March 25, 2024.²³

On March 27, 2024, the District filed a Joint Motion requesting the hearing dates be continued, and the 45-day timeline be extended, the Joint Motion indicated Parent has requested

¹⁵ IHO Ex. 25.

¹⁶ IHO Ex. 26.

¹⁷ IHO Ex. 27.

¹⁸ IHO Ex. 28.

¹⁹ IHO Ex. 29.

²⁰ IHO Ex. 30, 36.

²¹ IHO Ex. 30.

²² IHO Ex. 30.

²³ IHO Ex. 31.

copies of student records that are not in her possession and prevent the Parent from filing hearing disclosures on April 3, 2024.²⁴ A status conference was held March 27, 2024, Parent stated she could not provide the dates necessary to complete the issues due to missing documentation from the District.²⁵ The Parties filed a joint motion to continue the hearing dates.²⁶ A status conference to discuss outstanding Student records was scheduled for April 5, 2024.²⁷ The Hearing Officer requested Parent provide the District with a specific list of Student records she alleges are outstanding, and the matter was continued for status to April 24, 2024.²⁸

During the April 24, 2024, status a new Prehearing Conference date was schedule for June 19, 2024, with updated prehearing conference disclosures due on June 14, 2024, the 45-day decision date was continued to June 30, 2024.²⁹

The District filed updated prehearing disclosures on June 14, 2024.³⁰ No Parent disclosures were filed. At the June 14, 2024 Prehearing Conference, the Parent stated she needed additional time to review Student records before agreeing to finalize issues, and she requested a continuance, the Parties agreed to accept hearing dates for December 2, 3, and 4, 2024,³¹ the District's Attorney, on behalf of the Parent filed a Motion to continue the 45-day decision timeline to accommodate the new hearing dates.³² The 45-day decision date was extended to December 20, 2024, and the prehearing was rescheduled to August 9, 2024, with a mandatory prehearing disclosure date of August 6, 2024.³³ A summary setting forth the discussion at the June 19, 2024 prehearing conference was issued on July 2, 2024.³⁴

No updated disclosures were filed. The Hearing Officer requested to continue the

²⁴ IHO Ex. 36.

²⁵ IHO Ex. 36

²⁶ IHO Ex. 35.

²⁷ IHO Ex. 39.

²⁸ IHO Ex. 40

²⁹ IHO Ex. 42.

³⁰ IHO Ex. 43.

³¹ IHO Ex. 45

³² IHO Ex. 44

³³ IHO Ex. 46

³⁴ IHO Ex. 46

prehearing conference due to a family member's hospitalization.³⁵ No Order was entered as there was no agreement on a new date, the Order was issued on October 24, 2024, rescheduling the prehearing for November 4, 2024, with disclosures due on October 29, 2024.³⁶ No updated disclosures were filed, and on November 4, 2024, at 8:48 a.m. the Parent requested a continuance because of illness.³⁷ The Hearing Officer canceled the prehearing and by agreement of the parties it was rescheduled to November 8, 2024, with updated prehearing disclosures due November 8, 2024.³⁸ Parent failed to file the updated prehearing document disclosure, and the Hearing Officer authorized the District to file a motion to dismiss for failure to prosecute.³⁹ The prehearing moved forward on November 8, 2024, without the disclosures.

The proposed prehearing conference report and order was issued on November 10, 2024, comments were due on or before November 14, 2024 at 5:00 p.m.⁴⁰ Parent sent an email on November 14, 2024, requesting additional time to comment, both Parties were given until 11:59 p.m. to file comments⁴¹ Parent email was received, with no comments November 14 at 9:22 p.m., the District's email with comments was received at 11:48 p.m.⁴² The Final Prehearing Report and Order was issued on November 15, 2024.⁴³

Parent sent electronic disclosures which were not marked in accordance with the Prehearing Report and Order on November 21, 2024, between 5:06 p.m. and 5:34 p.m.⁴⁴ The District did not file electronic disclosures on November 21, 2024.

On November 22, 2024, the Hearing Officer emailed the Parties notifying them that the electronic disclosures were late or not filed on November 21, 2024 in accordance with the

³⁵ IHO Ex. 47.

³⁶ IHO Ex. 49.

³⁷ IHO Ex. 50

³⁸ IHO Ex. 51

³⁹ IHO Ex. 52.

⁴⁰ IHO Ex. 54

⁴¹ IHO Ex. 54.

⁴² IHO Ex. 56.

⁴³ IHO Ex. 57.

⁴⁴ IHO Ex. 59.

Prehearing Report and Order, the email reminded the Parent to provide printed copies of the disclosures to the Hearing Officer and opposing attorney and requested a status conference to discuss the late disclosures.⁴⁵ The District's electronic disclosures and printed exhibit book was received on November 22, 2024 before 5:00 p.m. The Parent's printed exhibit book was received on November 22, 2024, after 5:00 p.m. The Parent did not deliver the exhibit book to the District's Attorney. On November 24, 2024, the Hearing Officer notified the Parent about missing exhibits /pages in the exhibit book, including a list of items not provided.⁴⁶ An Order scheduling a status conference was issued on November 24, 2024.⁴⁷

The District filed objections to the Parent's disclosures and a Notice of Motion to Bar Parent's Exhibits,⁴⁸ the Motion to Bar was filed.⁴⁹ The Parent filed objections to the District's late filed disclosures.⁵⁰ At the status conference on November 25, 2024, the Parties discussed the late-filed Parent and District disclosures, the District's Attorney confirmed he never received the Printed disclosures. Strusz explained the 5-business day disclosure requirement and ruled the hearing would be reduced from three to two days so that the District's electronic and printed disclosures would be timely, and the Parent's electronic disclosure would be timely. The District's objection was overruled. Parent agreed to provide the printed disclosures to the District's Attorney by November 26, 2024 at 10:00 a.m., Parent was to provide the Hearing Officer with the missing pages of her printed exhibits by November 27, 2024 at 10:00 a.m., the status conference was continued to November 27, 2024.⁵¹ On November 27, 2024, Parent declined the opportunity to correct the Hearing Officer's printed exhibit errors.⁵² The District's Attorney confirmed receipt of the Parent's printed exhibit book on November 26, 2024, and noted the binder was not marked in

⁴⁵ IHO Ex. 61.

⁴⁶ IHO Ex. 62.

⁴⁷ IHO Ex. 63.

⁴⁸ IHO Ex. 64.

⁴⁹ IHO Ex. 65.

⁵⁰ IHO Ex. 67.

⁵¹ IHO Ex. 70.

⁵² IHO Ex. 70.

accordance with the Prehearing Report and Order.⁵³ The Parties discussed their objections to each others witnesses. By Order of December 1, 2024, the Parent's Exhibits 1,3,4,5,8,8-a, 8-b, 15, 18, 19 were barred, the District's objection to six of Parent's witnesses was sustained.⁵⁴

The Parent opted for a closed hearing.

The Due Process Hearing was held, using Zoom© technology, on December 3 and 4, 2024. The District provided a Court Report for both hearing dates.

The Parent presented her own testimony and five witnesses, and the District presented five witnesses.⁵⁵ Following the conclusion of the hearing on December 4, 2024, the Parties and Hearing Officer discussed, on the record, which documents had been entered into evidence throughout the hearing. The remaining documents in each party's evidence binder were destroyed. Parents exhibits: 2,6,10,11,12, and 22 were admitted into evidence. District's exhibits 1, 3,4,5,8,9,10,11,12,13,14,15,16,17,18,21,22,23,25 were admitted. There were no joint exhibits.

The Hearing Officer's Exhibits are IHO Exhibits 1-75. Both parties submitted written closing statements (IHO 74, 75).

The Parent issues, District response, being presented for determination are as follows:

THE ISSUES CERTIFIED FOR HEARING IN THIS CASE which I have the authority to hear and adjudicate:

Issue 1: Whether, from November 9, 2022, through May 31, 2023, the District failed to provide Student with the following related services provided in Student's November 9, 2022, and May 22, 2023, IEPs, allegedly denying Student a free appropriate public education ("FAPE"), specifically as follows:

- A) the support of a 1:1 paraprofessional/aide;
- B) social work service minutes-120 per month;
- C) occupational therapy minutes-120 per month;
- D) speech-language minutes-360 per month.

Issue 2: Whether the District's denied Student a FAPE when it failed, at the April 10, 2023, IEP meeting, to address Student's escalating behaviors by providing Student with a

⁵³ IHO Ex. 70.

⁵⁴ IHO Ex. 70.

⁵⁵ All witnesses and their acronyms are identified in Appendix A.

placement in a more restrictive setting.

Issue 3: Whether, although required by Student's Amended May 22, 2023, IEP,⁵⁶ the District failed to provide Student with extended school year ("ESY") services including the related services of speech/language services (45 minutes) and occupational therapy (15 minutes) during the summer of 2023, thus denying Student a FAPE.

RELIEF REQUESTED:

- A. A finding in favor of the Parent on the above issues.
- B. Placement of Student in an appropriate therapeutic day school with the related services of a dedicated 1:1 aide, speech/language therapy, occupational therapy, and social work services.
- C. Compensatory education for the District's failure to provide Student with speech therapy, occupational therapy, and other related services during school year 2022-2023. Reimbursement to Parents for any monies advanced for placement of Student at Discovery Ranch; and
- D. A dedicated 1:1 paraprofessional.
- E. For such further relief as this Hearing Officer deems appropriate.

FINDINGS OF FACT

Background and Student's initial months in District:

1. Student moved to the District in April 2022.⁵⁷ Student was registered in the District on July 13, 2022.⁵⁸ Student entered second grade⁵⁹ with an outdated IEP and eligibility.⁶⁰ Student's last IEP was dated 5/7/2020 was from an Illinois School District, it found Student eligible under the category of Autism.⁶¹ Parent withdrew from the Illinois School District and the Parent homeschooled him.⁶²

2. Six days after registration, on July 19, 2022, a District representative spoke with the Parent about holding an initial meeting,⁶³ a follow-up call was made on July 20, 2022.⁶⁴ Parent was contacted on August 5, 2022, regarding transportation and scheduling an initial placement

⁵⁶ THE DATE OF THE IEP PROVIDING ESY MUST BE VERIFIED BY THE PARTIES

⁵⁷ Parent testimony

⁵⁸ Parent testimony and Parent Ex. 2.

⁵⁹ SD21-372

⁶⁰ SD1-006

⁶¹ SD1-008

⁶² Parent testimony.

⁶³ SD1-003

⁶⁴ SD1-003.

meeting.⁶⁵

3. The Domain meeting was the first Parent/District meeting, it was held on August 12, 2022 meeting.⁶⁶ At the meeting it was determined that Student's evaluations were outdated, and a reevaluation was needed to assess Student's continuing eligibility and assist with planning for his current educational needs.⁶⁷ Based on Student's outdated IEP, the following domains were opened: Academic, Functional Performance, Cognitive Functioning, Communication, Health, Vision, Motor Abilities, and Social Emotional.⁶⁸ Student's prior IEP determined Student's functional communication skills, speech and language skills impacted his ability to communicate,⁶⁹ and Student received speech and language services to address communication difficulties.⁷⁰ On September 1, 2022, Parent agreed to amend the domains and add a Functional Behavior Analysis ("FBA").⁷¹ A second amendment for an adaptive PE evaluation was added to Student's domain on September 21, 2022.⁷²

4. Parent was given a copy of the Explanation of Procedural Safeguards.⁷³ Parent consented to the reevaluation on August 15, 2022.⁷⁴

5. August 15, 2022, was the first school day for the 2022-23 school year.⁷⁵ Student's placement on the first day was the District's Target Program at the Elementary School, with supports.⁷⁶ The Target program targets communication and academics, it focuses on students who are on the Autism Spectrum.⁷⁷ The program follows a structured teaching model and a text-structured model to build academic and communication skills geared to students who are diagnosed or showing symptoms of autism.⁷⁸ For the 2022-23 school year the SPED Teacher was in charge of the classroom, the SPED Teacher has been with the District for more than 25 years.⁷⁹

6. On September 29, 2022, Parent received notification of Student's IEP conference scheduled for November 9, 2022, and the District's intent to review Student's reevaluation(s)

⁶⁵ SD1-003.

⁶⁶ SPED Coordinator testimony and SD1

⁶⁷ SD1-006

⁶⁸ SD1-007-010

⁶⁹ SD-011

⁷⁰ SD1-011

⁷¹ SD3-100

⁷² SD1-002, SPED Coordinator Testimony.

⁷³ SD1-006.

⁷⁴ SD1-005

⁷⁵ Director testimony, SD 25.

⁷⁶ SD3-004, Director, SPED Teacher testimony.

⁷⁷ Director testimony.

⁷⁸ Director testimony.

⁷⁹ SPED Teacher testimony.

and review and/or revise the Student's IEP.⁸⁰ The meeting was scheduled less than 60 school days after the date Parent consented to reevaluations.⁸¹

During the meeting, the IEP team discussed:

- A. Student's reevaluations in the areas of occupational therapy,⁸² speech-language,⁸³ and Academics.⁸⁴ All reevaluations were completed timely. The results were reviewed.⁸⁵ Student was found eligible for IEP services under the primary disability of Autism.⁸⁶ The adverse effects of Student's Autism were reviewed.⁸⁷ As part of the reevaluation, Student's SPED Teacher was asked to complete the Gilliam Autism Rating Scale-third Edition (GARS-3), Student's Autism Quotient fell within the "very likely" range with a severity level 3 indicating he requires "very substantial support", the classroom observations supported this finding.⁸⁸ The team reviewed the Autism considerations, Student's needs, and the supports necessary to assist Student.⁸⁹ Student's present levels of academic, developmental, and functional performance were reviewed and found to be consistent with the results of the reevaluation.⁹⁰
- B. Student was provided an IEP with seven primary goals:⁹¹
 1. Academic goal literacy;⁹²
 2. Academic goal math;⁹³
 3. Gross Motor goal;⁹⁴
 4. Social Work;⁹⁵
 5. Sensory Motor Goal (implemented by OT and SPED Teacher);⁹⁶
 6. Speech-Language/functional Communication-Expressive Language;⁹⁷

⁸⁰ SD4-153 and SPED Coordinator Testimony.

⁸¹ SD25-382.

⁸² OT testimony and SD4-174.

⁸³ SD4-189

⁸⁴ SPED Teacher testimony and SD4-192.

⁸⁵ SPED Coordinator Testimony and SD4-161-165.

⁸⁶ SPED Coordinator Testimony and SD 4-166

⁸⁷ SD4-166-167

⁸⁸ SD4-116

⁸⁹ SPED Coordinator Testimony and SD4-168

⁹⁰ SPED Coordinator testimony and SD4-112-116.

⁹¹ The District is on trimesters OT testimony.

⁹² SD4-117-119, SPED Coordinator testimony

⁹³ SD4-120-122. SPED Coordinator testimony

⁹⁴ SD4-123-24, SPED Coordinator, and PE teacher.

⁹⁵ SD4-125-126, SPEC Coordinator testimony

⁹⁶ PE 4-127-130, OT testimony.

⁹⁷ SPED Coordinator Testimony and SD4-131-133,

7. Speech/Language Receptive Language.⁹⁸
 8. The goals included Benchmark(s)/short term objectives(s).⁹⁹
- C. Educational Accommodations and supports were identified. Student received:
- a. Assistive technology support;
 - b. Visual schedule, visual aids;
 - c. Behavior intervention plan;
 - d. Classroom/functional accommodations;
 - e. Behavior accommodations;
 - f. School Personnel were to receive Crisis Prevention Institute (“CPI”) training and a speech/language pathologist to consult with staff on communication strategies.¹⁰⁰
- D. The Team reviewed the data collected on the District’s Matrix for associate support forms.¹⁰¹ This data is collected so the team can look at each part of a student’s day and determine what type of support would be needed during academics, specials like PE, music, and transitioning to and from the bus or around the building. Student needed associate support in the areas of behavioral, learning, and physical.¹⁰²
- E. During that meeting the team determined Student’s Services and Placement to be the Self-Contained Special Education program for 1690 minutes per week, Adapted PE for 60 minutes per week, Social Work for 120 minutes monthly (in special education), Speech/Language 360 minutes monthly (in special education), Occupational Therapy 120 minutes monthly (in special education), and Aide-individual Student 1750 minutes weekly.¹⁰³
- a. The IEP Parental Education Concerns/input states: “Mom is pleased that he will be receiving the support of a one to one associate.”¹⁰⁴
- F. The IEP does not mandate a dedicated associate or paraprofessional.
- G. The IEP contained a Behavior Intervention Plan (“BIP”). The original BIP could not be reviewed because it was automatically updated by the District’s use of

⁹⁸ SD4-134-136.

⁹⁹ SD4-117-136

¹⁰⁰ SD4-137-138

¹⁰¹ SPED teacher. The District uses associate, aide, and paraprofessional interchangeably.

¹⁰² SPED teacher and SD4-195-205.

¹⁰³ SD 4-145.

¹⁰⁴ SD4-112

the Embrace© system. The BIP within the November 9, 2022 IEP is dated April 10, 2023, which is an amended document.¹⁰⁵

7. The November 9, 2022 IEP was immediately implemented.¹⁰⁶ Student was provided with a communication device.¹⁰⁷

8. The IEP provided Student with an “Aide-Individual Student”.¹⁰⁸ The Target classroom consisted of 8 total students, with a minimum of five (5) adults at all times.¹⁰⁹ During the 2022-23 school year, the associates in Student’s classroom were CN, EP, MW, with JT¹¹⁰ specifically hired for Student on February 21, 2023, and MC added in April 2023.¹¹¹ Associates in the Target classroom are not assigned to any individual Student to prevent student dependency on one associate, it allows associates to rotate throughout the day replacing designated student associates during breaks, lunch, and sick days.¹¹² Associates are assigned by the SPED teacher to a specific student at the beginning of each week.¹¹³ The SPED Teacher credibly testified she assigned an associate to Student every week, this testimony was supported by the testimony of the PE Teacher, Psych, Director. The Director observed Student, and he was working with one or two associates 99.9% of the time.¹¹⁴

9. Student received Occupational Therapy services beginning the first day of school.¹¹⁵ Student was formally provided with an OT goal and minutes at the November 9, 2022 IEP meeting. There was one Occupational Therapist assigned to the Target classroom she completed Student’s evaluation and determined “Student required direct occupational therapy to address underlying sensory and motor skill deficits and differences that affect his functional skills, completion of school activities and regulation of activity level/attention.”¹¹⁶ The OT was experience and had been with the District for twelve (12) years.¹¹⁷ The OT drafted Student’s one occupational therapy goal which was to use coordination and graded control of movement in

¹⁰⁵ SD4-142-144.

¹⁰⁶ SPED Coordinator and OT testimony.

¹⁰⁷ OT testimony.

¹⁰⁸ SPED-Teacher testimony, SD4-145,SD4-148.

¹⁰⁹ SPED-Teacher testimony.

¹¹⁰ From 2/21-3/16/23 JT was a substitute until paraprofessional license issued on 3/17/23. No license required for short-term paraprofessionals fulfilling license requirement. Director testimony, SD10-237.

¹¹¹ Director testimony and SD11-238, SD 10-237

¹¹² Director, SPED Teacher testimony.

¹¹³ SPED Teacher

¹¹⁴ Director Testimony.

¹¹⁵ SD12-239

¹¹⁶ OT testimony and SD4-176.

¹¹⁷ OT testimony.

order to complete 3 functional work tasks or work boxes, within the given time frame.¹¹⁸ The OT recommended Student be provided with 120 minutes of direct occupational therapy services per month.¹¹⁹ OT was responsible for providing Student's occupational therapy and was scheduled to see Student twice per week to implement the goal and provide options for his sensory needs in the classroom.¹²⁰

A. OT was responsible for tracking Student's occupational therapy services each month.¹²¹ She admitted she failed to keep accurate service provided records. Her service records indicate that in November he received 95 minutes of OT services; in December 60 minutes (short month and Student absent one session day); January 2023 20 minutes (Student absent 2 session days);¹²² February 30 minutes (Student absent 3 session days, school closed one snow day); March 105 minutes (Student missed 2 sessions absent one session late); April 95 minutes (Student absent 2 session days); May 140 minutes (student absent 2 session days). At the May 22, 2023 IEP it was determined Student made insufficient progress on this goal only completing a 1-step task, that he prefers, for short amounts of time, 1-2 minutes.¹²³ The OT admitted she did miss providing services to Student due to IEP meetings and illness.¹²⁴

B. The OT was the only occupational therapist assigned to Student's classroom.

C. The OT was aware Student needed ESY services to avoid loss of skills during the summer or other breaks when a student is absent.

10. Speech/Language. The Speech Language Pathologist did not testify. Student's Speech-Language reevaluation during the period 9/1/22-11/03/22 states:

"[Student] demonstrates delays with his expressive language, receptive language, and functional communication skills due to his Autism. [Student] uses verbal speech, core vocabulary boards, picture supports, and gestures to communicate his wants and needs."¹²⁵ "Within the classroom environment, [Student] is most effective using pictures to independently communicate his wants and needs. This modality allows him to make requests, refusals, and advocate for help. [Student] is beginning to use an iPad with a core 48 board that will allow

¹¹⁸ SD4-128

¹¹⁹ OT testimony and SD4-128

¹²⁰ OT testimony.

¹²¹ OT testimony.

¹²² OT testimony.

¹²³ OT testimony and SD4-128

¹²⁴ OT testimony and SD 12.

¹²⁵ SD4-191.

access to more fringe vocabulary.”¹²⁶

- a. Student received Speech Therapy services beginning the first day of school.¹²⁷
- b. Student’s November 9, 2022 IEP provided one speech/language goal “[Student] will independently communicate a variety of functions such as requests, refusals and comments using total communication strategies (i.e. verbal speech, core vocabulary board, picture supports for fringe 7/10 charted opportunities.”¹²⁸ The IEP also provides two short term objectives.¹²⁹ Student was to have received 360 minutes monthly in Special Education.¹³⁰ The goals/objectives were to be implemented by the SLP, the SPED teacher, and educational team.¹³¹ These services were provided in the Target classroom by the speech language pathologist.¹³² During the May 15, 2023 IEP meeting, the speech/language pathologist reported Student was making sufficient progress on his speech/language goal/objectives.¹³³
- c. The SLP kept track the services she provided: In November 2022 Student received 430 minutes of speech therapy;¹³⁴ 285 minutes in December (four Student absences); 240 minutes in January 2023 (two student absences); 160 minutes in February (one student absence, one snow day); 240 minutes in March (three student absences); 270 minutes in April (three Student absences, one late to school); and 180 minutes in May (four Student absences, one late to school).¹³⁵ All provider documentation is signed by the speech language pathologist and/or the SPED Teacher or both.¹³⁶
- d. Prior to Winter break 2022, Student’s IEP team made a referral to the SLP-AAC for a consultation about the implementation of low tech/high tech AAC systems for Student.¹³⁷ Student received the services of the District’s SLP-AAC, who is the lead speech language pathologist and assistant technology facilitator.¹³⁸ The SLP-AAC is not considered a related service on Student’s IEP.¹³⁹

¹²⁶ SD4-191.

¹²⁷ SD13-249

¹²⁸ SD 4-131.

¹²⁹ SD4-132-133

¹³⁰ SD4-145.

¹³¹ SD4-131.

¹³² SPED-Teacher

¹³³ SD4-132-33.

¹³⁴ SD13-252

¹³⁵ SD 13-249-258.

¹³⁶ SD13-249-258

¹³⁷ SLP-AAC testimony.

¹³⁸ SLP-AAC testimony.

¹³⁹ SLP-AAC testimony.

- e. SLP-AAC interacted with Student, considered the continuum of technology, and provided Student with an iPad secured in a durable case with a strap, initially the cough drop program was trialed allowing Student to press a buttons and the device would speak aloud.¹⁴⁰ Student's communication device was used within the classroom.¹⁴¹ The SLP-AAC determined Student to be a verbal communicator, if Student verbalized then he was not asked to use his communication device, the communication device was implemented to help diversify and expand Student's language. SLP-AAC trained the staff working with Student on the use of the AAC device, and participated in the planning, learning, and collaboration meetings¹⁴²

11. The 2022-23 District Social Worker did not testify. The Social Worker provided services in the TARGET classroom on Wednesdays from 8:00-10:15 a.m.¹⁴³ Student's November 9, 2022 IEP provided one social work goal: "[Student] will use visual supports and total communication to get his needs met. He will indicate the need for help or a break using a visual card or verbal request in 80% of the opportunities observed."¹⁴⁴ There were two short-term objectives.¹⁴⁵ The Goal/objectives were to be implemented by the Social Worker and Occupational Therapist.¹⁴⁶ At the IEP meeting on May 18, 2023 the social worker reported Student had made sufficient progress on his goal and on the short term objectives¹⁴⁷ Student's IEP provides Student with 120 minutes monthly in special education. No statement of social work services was provided during the hearing.

12. Student's attendance for the 2022-23 school year was: 1) Trimester 1, days present 47.5, days absent 10.5, times tardy 3; 2) Trimester 2, days present 43, days absent 12 times tardy 12; 3) Trimester 3 days present 44.75 days absent 16.25, times tardy 21. Student's attendance for the year out of 174 school days, Student was absent 38.75.¹⁴⁸ Student's numerous absences during the second and third trimester impacted the District's ability to provide Student's related services.

¹⁴⁰ SLP-AAC testimony.

¹⁴¹ SLP-AAC testimony.

¹⁴² SLP-AAC testimony.

¹⁴³ SPED Teacher and SD14-258b.

¹⁴⁴ SD4-125.

¹⁴⁵ SD4-126.

¹⁴⁶ SD4-125.

¹⁴⁷ SD4-125-126.

¹⁴⁸ SD21 and SD22, Testimony of SPED Teacher.

January-Spring 2023

13. Due to Student's homeschooling, he did not enter the District with updated information on academics and behavior.¹⁴⁹ The District spent the first half of the year getting to know him and trying to determine Student's specific needs.¹⁵⁰

14. After returning from Winter break, Student began exhibiting elopement and physical aggression toward peers and staff.¹⁵¹ The behaviors included hair pulling, jumping on teacher/staff backs, hitting staff, body slamming staff shoulder/back, pushing staff, jumping on peers, throwing items, and elopement attempts.¹⁵² These behaviors escalated the week of February 6, 2023. Warning signs were identified as loud verbalizations,¹⁵³ swearing, throwing something,¹⁵⁴ climbing onto tables/furniture, running/eloping without the ability to be redirected.¹⁵⁵

15. On February 8, 2023, the SPED teacher sent a message through the District's class DOJO asking to meet with Parent during parent/teacher conferences to discuss Student's behavior, communication, and outside resources.¹⁵⁶ Parent agreed to the meeting.¹⁵⁷

16. On February 13, 2023, Parent met with members of the IEP team to draft a Safety Plan which included 1) Threat assessment; 2) Principal and Parent discussion; 3) Social Worker discussion of outside resources; 4) social worker offers to meet with outside mental health assessment with family; 5) a crisis response plan was developed; and Student was assigned a one to one Associate (Ms. [CN]).¹⁵⁸ The Safety Plan was put into place on February 13, 2023.¹⁵⁹ The purpose of the plan was to keep Student safe.¹⁶⁰ There was an agreement to meet in three days to revise Student's behavior intervention plan.¹⁶¹

17. A meeting to review Student's safety plan and update his BIP was scheduled for March 13, 2024.¹⁶² The revised BIP draft was sent home on March 20, 2023.¹⁶³ No evidence

¹⁴⁹ Director testimony.

¹⁵⁰ Director testimony.

¹⁵¹ OT testimony and Parent Ex. 10

¹⁵² Parent Ex. 10

¹⁵³ OT testimony.

¹⁵⁴ OT testimony.

¹⁵⁵ Parent Ex. 10, OT testimony

¹⁵⁶ SPED teacher testimony, SD23-379.

¹⁵⁷ SPED teacher SD23-379.

¹⁵⁸ Parent Ex. 10

¹⁵⁹ Parent testimony.

¹⁶⁰ SPED Teacher testimony.

¹⁶¹ SPED teacher testimony, and Parent Ex. 10

¹⁶² SD 23-378.

¹⁶³ SD23-378

was presented about whether there was any modification to Student's BIP at this meeting.

18. The Director of Special Services ("Director") is experienced in providing special education services to the District and students, she has worked in this role for seventeen (17) years.¹⁶⁴ During the Spring of 2023, the Director gained familiarity with Student due to the ongoing behavioral and safety issues involving Student.¹⁶⁵ A virtual meeting was held on April 10, 2023 to discuss Student's behavior, the Director was present.¹⁶⁶

19. On April 10, 2023 a virtual meeting was held to review the safety plan and update Student's behavior intervention plan, Parent was present.¹⁶⁷ During the Student's BIP, FBA and Safety Plan were reviewed.¹⁶⁸ Parent expressed her concerns that Student's needs were not being met, Parent was asked whether she was seeking a different placement and Parent responded no.¹⁶⁹ A potential change in Student's placement from the Target program to a therapeutic program was discussed, but it was determined Student would remain in the current Target Program placement to see if the change in the BIP would be successful.¹⁷⁰ The District was anticipating a decrease in Student's behaviors with the updated behavior plan.¹⁷¹ Parent did not contest the revision notes.¹⁷²

20. In April-May 2023, Student was injured multiple times at school.¹⁷³ Student was injured in the classroom on three occasions: April 13, 2023,¹⁷⁴ April 20, 2023 (this injury required Student being transported to the hospital,)¹⁷⁵ and May 10, 2023 which required Student being taken to the hospital by ambulance.¹⁷⁶ Parent requested an injury report for the April 13, 2024 incident be provided to her, the District did not complete the report until April 20, 2023.¹⁷⁷

21. Parent contacted the Special Education Department because Student's IEP, BIP, and FBA were not working.¹⁷⁸ Parent spoke to the Director in May of 2023, Parent was unhappy

¹⁶⁴ Director testimony.

¹⁶⁵ Director testimony.

¹⁶⁶ Director testimony, SD4-151-152.

¹⁶⁷ SD4-142-144

¹⁶⁸ Director testimony.

¹⁶⁹ SD4-152

¹⁷⁰ Director testimony.

¹⁷¹ SD8-221.

¹⁷² Parent Testimony

¹⁷³ Parent testimony

¹⁷⁴ Parent Ex. 11. The report of accident/injury was not completed by the district until April 20, 2023.

¹⁷⁵ Parent Ex. 12

¹⁷⁶ Parent Ex. 22.

¹⁷⁷ Parent Testimony.

¹⁷⁸ Parent testimony

with the Student's programming at the Elementary School and wanted to discuss other options.¹⁷⁹ Student was getting hurt and unintentionally hurting others while in the Elementary School.¹⁸⁰ An IEP amendment meeting was scheduled.¹⁸¹

22. An IEP meeting was held on May 22, 2023, the team determined Student's needs were no longer being met at the Elementary School and it was time to change programming.¹⁸² On May 22, 2023, Parent met with the SPED Coordinator, via telephone, to amend Student's IEP to reflect the team decision that Student's placement should be changed from the Target Program to a therapeutic day school.¹⁸³ The ESY page of Student's IEP was changed to a public therapeutic program.¹⁸⁴ The IEP team was aware of the time constraints between the change of placement on May 22, 2023 and the start of ESY on June 5, 2023. It was explained that if a placement was not secured by the start of the next school year Student would return to the Target Program with additional accommodations and supports until a new placement was located.¹⁸⁵ The District has an ESY program for the District public therapeutic day school.¹⁸⁶ Student did not qualify for the District's public therapeutic ESY program which, at the time, was for students with serious behavioral and emotional difficulties not students with autism.¹⁸⁷ Student's placement was changed from the Target Program to a therapeutic day school program.¹⁸⁸ The ESY page of Student's IEP was changed to a public therapeutic program.

23. The Parent and Director discussed the summer therapeutic placement process. Director explained that it might take weeks to find Student a therapeutic ESY and Student would remain in the District's ESY program until another placement was located.¹⁸⁹ If a therapeutic placement was not located by the start of the 2023-2024 school year, Student would return to the District Target program at the Elementary School.¹⁹⁰

¹⁷⁹ Director Testimony.

¹⁸⁰ Director Testimony.

¹⁸¹ Director Testimony.

¹⁸² Director Testimony.

¹⁸³ Director Testimony, SPED Coordinator testimony, SD9-225-227, 233, SD4-147

¹⁸⁴ SPED Coordinator and SD4-147.

¹⁸⁵ SPED Coordinator, Director testimony and SD9-233.

¹⁸⁶ Director Testimony.

¹⁸⁷ Director testimony.

¹⁸⁸ Director Testimony.

¹⁸⁹ Director Testimony.

¹⁹⁰ Director Testimony, SD4-152.

24. Parent signed consents to apply to therapeutic programs for ESY.¹⁹¹ The District sent the applications, but there was either no response or Student was rejected.¹⁹²

ESY 2023

24. Student was found eligible for ESY services in February 2022.¹⁹³ The District's ESY programs are provided at two campuses one primarily for the life skills program and one for the Target Program.¹⁹⁴ There is no traditional summer school program for general education students.¹⁹⁵

25. SPED Teacher contacted Parent using the District's DOJO email system regarding ESY registration on April 2, 2024, and received approval to sign Student up for ESY.¹⁹⁶

26. The District was prepared to provide ESY 2023 services for Student.¹⁹⁷ Student's ESY teacher was notified¹⁹⁸ A three page spreadsheet used to transfer equipment from one building to another was prepared so all items used by Student in the classroom could be moved to the ESY program.¹⁹⁹ All items on the spreadsheet were delivered to ESY 2023, and set up in the classroom.²⁰⁰ A speech pathologist and occupational therapist were hired and provided with information about Student's required minutes.²⁰¹The District hired a 1:1 associate specifically for Student, utilized information from the BCBA to set up his area in the classroom, moved his specific equipment from the Elementary School to the ESY school (two different campuses).²⁰²

27. The District's SLP-ACC was aware Student was scheduled to participate in ESY 2022.²⁰³ She prepared the ESY transition documentation for the SLP-ESY which included passwords, the system and applications being tried, IEP paperwork, and prepared the Student's ACC device for ESY 2022.²⁰⁴ This information was shared with the SLP-ESY via spreadsheets and the District's Embrace system.²⁰⁵

¹⁹¹ Director Testimony.

¹⁹² Director Testimony.

¹⁹³ Director Testimony.

¹⁹⁴ Director Testimony.

¹⁹⁵ Director Testimony.

¹⁹⁶ SPED Teacher testimony and SD23-378

¹⁹⁷ Director _____

¹⁹⁸ ESY Principal and SD16-263

¹⁹⁹ ESY Principal testimony and SD18-270-272.

²⁰⁰ ESY Principal testimony.

²⁰¹ ESY Principal testimony.

²⁰² Director, ESY Principal testimony and SD 17-269.

²⁰³ SLP-AAC testimony.

²⁰⁴ SLP-AAC testimony.

²⁰⁵ SLP-AAC testimony.

28. Student did not attend ESY 2023 and Parent did not contact the District or respond to any email.²⁰⁶

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:

The Individuals with Disabilities Education Act ("IDEA") is a law that makes a free appropriate public education available to eligible children with disabilities and ensures special education and related services to those children. A student is eligible for special education if he or she has a disability as defined under the IDEA and "by reason thereof needs special education and related services." 20 U.S.C. § 1401. Special education means "specially designed instruction to meet the unique needs of a child with a disability" and related services are the supportive services required to assist a student to benefit from their education. 20 U.S.C. § 1401 (9); 34 CFR §300.34; 34 CFR §300.39.

Under the 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 Ct Sch. Dist.*, No 15-827, 137 S.Ct. 988, 999 (U.S. Mar. 22, 2017). "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. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Endrew* at 999, citing *Rowley* at 206-207.

The United States Supreme Court has held the burden of persuasion lies with the party filing the due process complaint. *Schaffer v. Weast* 546 U.S. 49, 126 S. Ct. 528, 538 (2005). In Illinois, during a due process hearing, the school district has the burden of presenting evidence that the special education needs of the student have been appropriately identified and

²⁰⁶ ESY Principal testimony.

that the special education program and related services proposed are adequate, appropriate, and available. 105 ILCS 5/14-8.02a(g-55).

An IEP must be in effect at the beginning of each school year. 34 C.F.R. §300.323 (a). If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State and enrolls in a new school within the same school year (emphasis added), the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency, until the new public agency either (1) adopts the child's IEP from the previous public agency; or (2) develops, adopts and implements a new IEP that meets the applicable requirements in 34 C.F.R §§ 300.320 through 300.324. The IDEA regulations only address a district's obligation to transfer students with disabilities who move during the school year. It does not address transfer students who transfer during the summer break or with an outdated IEP/evaluation.

The school district in which a student resides is charged with the responsibility of providing the child with a FAPE 105 ILCS 5/14-1.08, 4.01. A school district must develop an individualized education program (IEP) for each student who receives special education and related services. 20 U.S.C. § 1414(d). The educational program set out in the IEP must be "individually designed" and "reasonably calculated to enable the child to receive educational benefit." *Rowley*. A district is not required to provide "the best possible education." *Todd v. Duneland Sch. Corp.*, 299 F.3d 899, 905 (7th Cir. 2002.) However, the special education must produce progress, not regression or trivial educational advancement. *Alex R. v. Forestville Valley County Sch. Dist.*, 375 F.3d 603, 615 (7th Cir. 2004).

If there is not a current IEP **in effect** (emphasis added), the new district is free to conduct its own evaluation and determine what the student's special education needs are. For example, in *In re: Student with a Disability*, 115 LRP 46629 (SEA IL 06/12/15), *aff'd*, 70 IDELR 33 (N.D. Ill. 2017), the IEP for a preschool student with a developmental delay had expired by the time he transferred into another Illinois district, the new district was not bound to implement it. Instead, the impartial hearing officer held, the receiving district's work to identify the student's special education needs and propose a program from which the student could benefit met IDEA standards.

The date that the Parent provided the outdated IEP, or the date it was received from the previous Illinois school district was never provided. It must be noted that whether or not the District followed the required procedures after the enrollment/transfer of the Student with an outdated IEP from a different Illinois district is not an issue in this case. The Parent attempted to

argue Student was enrolled in the Spring of 2022 after the family's move, the evidence and testimony demonstrate Student was enrolled on July 15, 2022,(FF1) and following enrollment, the District took the necessary steps to contact the Parent,(FF2) arrange transportation,(FF2) hold a domain meeting, (FF3) provide an IEP placement with supports based on available information on the first day of school,(FF5) evaluate Student (including amending the domains once Student was in his placement for several weeks),(FF3,6) and hold the November 9, 2022 IEP meeting where the District reviewed the evaluations and provided Student with an IEP placement, goals, and related services.(FF6) The District has met its burden of presenting evidence that the special education needs of the student have been appropriately identified and that the special education program and related services proposed are adequate, appropriate, and available.

Three issues were certified for this hearing:

Issue 1: Whether from November 9, 2022, through May 31, 2023, the District failed to provide Student with the following related services provided in Student's November 9, 2022, and May 22, 2023 IEPs allegedly denying Student a free appropriate public education ("FAPE") specifically as follows:

- A) The support of a 1:1 paraprofessional/aide;
- B) Social work service minutes;
- C) Occupational therapy minutes;
- D) speech-language minutes.

Related services under the IDEA means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. 34 CFR § 300.34(a). Related services include "speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training." 34 CFR § 300.34 (a).

The United States Circuit Court of Appeal for the 7th Circuit has not recognized a specific standard to determine whether the failure to provide all related services or minutes identified in an IEP amounts to an implementation failure and therefore a denial of FAPE. The 3^d, 4th, 5th, 8th, 9th, and 11th U.S. Circuit Courts of Appeal have held that only a material implementation

failure will qualify as a denial of FAPE. *Abigail P. v. Old Forge Sch. Dist.*, 124 LRP 21769 (3d Cir. 06/26/24); *Sumter County Sch. Dist. 17 v. Heffernan*, 56 IDELR 186 (4th Cir. 2011); *Houston Indep. Sch. Dist. v. Bobby R.*, 31 IDELR 185 (5th Cir. 2000), *cert. denied*, 111 LRP 30885, 531 U.S. 817 (2000); *Neosho R-V Sch. Dist. v. Clark*, 38 IDELR 61 (8th Cir. 2003); *Van Duyn v. Baker Sch. Dist. 5J*, 47 IDELR 182 (9th Cir. 2007), *reprinted as amended*, 107 LRP 51958, 502 F.3d 811 (9th Cir. 2007); and *L.J. v. School Bd. of Broward County, Fla.*, 74 IDELR 185 (11th Cir. 2019).

Where a district substantially implements a student's IEP, its failure to comply with a single component of the IEP will not deny the student FAPE. See e.g., *L.J. v. School Bd of Broward County, FL* 74 IDELR 185 (11th Cir. 2019) the Court found the difference between the services required by the IEP and the services actually provided was not significant enough to constitute a material implementation failure. A district can establish substantial compliance by showing that the student made progress toward achieving his goals, improving his grades, and receiving passing scores on state assessments. See e.g., *A.P. v. Woodstock Bd of Educ.* 55 IDELR 61 (2nd Cir. 2010, unpublished)

When reviewing the evidence and testimony presented in this case, the Hearing Officer was acutely aware that her determination of a witness's credibility would be a deciding factor on an individual issue. A Hearing Officer has the authority to make credibility findings *Marshall Joint School District No. 2 v. C.D. ex rel Brian D.*, 606 F3d 632, 638 (7th Cir. 2010).

The Parent alleges Student was denied FAPE when the District failed to comply with the requirements of Student's IEP in several ways. First Parent contends that Student did not have a 1:1 aide she alleges was required by his IEP. Second, Parent asserts that the District failed to provide Student with all of the related service minutes required by Student's IEP.

The Parent's argument that the District failed to provide Student with a dedicated one-to-one aide is based purely on the Parent's interpretation of what support she believed the District intended to provide Student. Parent envisioned one specific individual being hired to be with and assist Student while at school, therefore, she argues the District's failure to hire an associate specifically for Student means he did not get the required support. There can be no argument that the District's wording in the IEP of "Aide-Individual Student" is nonspecific and open to interpretation.(FF8) The wording clearly led to the Parent's misunderstanding, beginning at the initial November 9, 2022 IEP and continuing through the end of the school year, of what type of support Student was being provided. This misunderstanding was reinforced by the IEP's note "Mom is pleased with the one-to-one associate." (FF6Ea) However, the uncontroverted and credible testimony from several witnesses who attended Student's IEP meeting was that no one

person would be permanently assigned to the Student, rather a classroom associate would be assigned to assist Student at all times. (FF8) The SPED Teacher's credible testimony was she assigned an associate to Student at the start of each week is uncontroverted by the Parent. The witnesses gave credible testimony regarding the prevention of student dependency on any associate. (FF8) Parent offered no testimony she observed Student without an associate, or from any witness that Student did not have an associate with him at all times. In fact, I find the testimony of multiple District witnesses to be credible and persuasive confirming there was an associate assigned to Student at all times. (FF8) Based on the evidence presented in this case I find that the Parent failed to meet the burden of proof, and I rule for the District.

Next, Parent argues the District failed to provide Student with the related services in Student's November 9, 2022 IEP.

Student's IEP provided Student with Social work services of 120 minutes per month. Parent presented no evidence to show Student's services were not provided. In contrast the District provided evidence that the social worker was scheduled to provide services in the Target classroom on a set schedule, twice per week. (FF11) Student's May 18, 2023 IEP evidences that Student made progress on his social work goal. (FF11) I find that the Parent failed to meet the burden of proof, and I find for the District.

The same experienced OT that did Student's reevaluation, drafted Student's occupational therapy goal, recommended the minutes necessary to achieve the goal, and was charged with implementing the goal. (FF9) The OT credibly testified she provided Student's occupational therapy, and that Student received his occupational therapy service. The OT admitted she made errors entering the services data, including duplicate entries, and these records substantiate there were some missed service minutes.(FF9a) In January 2023 Student received only 20 minutes of OT services (a 100-minute loss), and only 30 minutes in February (a 90-minute loss). The OT acknowledged Student failed to make sufficient progress on his occupational therapy goal. The question then becomes whether these missed services amounted to a denial of FAPE. Student's numerous absences during the Winter/Spring of 2023 (FF12) must be taken into account, services cannot be rendered if a student is not present, I find his absences are a mitigating circumstance impacting the District's ability to provide services. The missed OT services, taken in isolation, were insufficient to deny Student a FAPE. By a preponderance of the evidence, I find the Parent has failed to establish a material implementation failure by the District in providing occupational therapy services to the Student. I rule for the District.

The final Parent argument for Issue 1 is the failure to provide Student with 360 minutes

per month of speech/language minutes. This was a team goal to be implemented by Student's entire educational team. (FF10) The SLP's records of service were unchallenged by the Parent, these records do not account for the services of the SLP-AAC or the educational team. I find Parent has been unable to meet the burden of proof that there were any missed speech/language minutes, therefore, I rule for the District.

Issue 2: Whether the District's denied Student a FAPE when it failed, at the April 10, 2023, IEP meeting, to address Student's escalating behaviors by providing Student with a placement in a more restrictive setting.

Parent next alleges that a free appropriate public education was not provided to Student and that the Student needed a more restrictive environment to control Student's behaviors than was available in the District's Target Program. Parent asserts that at the meeting on April 10, 2023, the District, rather than modifying Student's FBA, should have changed Student's placement and that its failure to provide a more restrictive setting denied Student a FAPE. The IDEA contemplates that "an appropriate education is one that occurs in the least restrictive environment." 20 U.S.C. § 1412(a)(5); *Beth B. v. Van Clay*, 282 F. 3d 493, 498 (7th Cir. 2002); see *Alex r. v. Forrestville Valley Comm. Unit Sch. Distr #221*, 375 F. 3d 603, 618 (7th Cir. 2004).

District witnesses testified and presented documentary evidence illustrating the several attempts made by the IEP team to modify Student's BIP in an effort to address Student's behavior. (FF15,16,17,19,20). Beginning in February 2023, the District held an IEP meeting, reviewing the BIP and writing a safety plan. During this case, the Parent argued that in February 2023, the District denied Student any educational services until he received a mental health assessment (which he was too young to obtain), however, no evidence was presented at hearing to support this contention. The evidence has shown Student's BIP appears to have been reviewed and modified in February, March, and April of 2022. (FF16,17,19) A move to a more restrictive environment was discussed in April 2022. (FF19) The credible testimony of the SPED Coordinator and the Director that the District wanted to attempt to implement Student's BIP in the LRE prior to changing Student's placement to a more restrictive therapeutic program was credible and persuasive. (FF19, 22).

Based upon the testimony and documentary evidence presented at hearing, Parent's contention that the District failed to provide a FAPE when it did not change Student's placement to a therapeutic placement in April 2022 is unsupported. Therefore, I find Parent has been unable to meet the burden of proof on this issue and I rule for the District.

Issue 3: Whether, although required by Student's Amended May 22, 2023, IEP, the District failed to provide Student with extended school year ("ESY") services including the related services of speech/language services (45 minutes) and occupational therapy (15 minutes) during the summer of 2023, thus denying Student a FAPE.

Parent's final allegation is that the District failed to provide Student with ESY services for the Summer of 2023. The evidence on this issue is overwhelming and does not support Parent's contention. At the hearing, five (5) witnesses testified and documentary evidence was presented that the IEP team agreed Student was to receive ESY services as early as February 2023. (FF9C, 24-27). The District went to great lengths to ensure that all of Student's educational classroom items were transferred to the ESY location, transition documentation was created, passwords shared, teaching team hired/alerted.²⁰⁷ (FF26-27). Uncontroverted testimony is that ESY was discussed with the Parent on numerous occasions, and after a change in placement to a therapeutic day school in May 2023, Parent even assisted the District in attempting to find a therapeutic ESY placement. (FF23). I find the testimony of the District's five witnesses on this issue to be credible and persuasive. I believe during discussions with Parent following the change in placement that it was made clear the Student would attend ESY at the District if a therapeutic placement could not be located.(FF23) Parent's argument that there was a "failure to communicate" and failure to "follow through" on the part of the District's staff is simply without merit. Parent never offered a credible explanation for why she did not take her Student to ESY, and her attempt to deflect her own failure on the District's not making enough attempts to contact her falls on deaf ears.

Based upon the testimony and documentary evidence presented at hearing, Parent's contention that the District failed to provide a FAPE by failing to provide Student with ESY services in 2023 is unsupported. Therefore, I find Parent has been unable to meet the burden of proof on this issue and I rule for the District.

CONCLUSION

Based on the above Finding of Facts, documentary evidence admitted into evidence, and Conclusions of Law, it is the determination of this Hearing Officer that, at all times in question, the District has provided the Student with a FAPE. All Parent claims/arguments to the contrary

are hereby denied.

ORDER

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

1. The District has met its burden regarding the appropriateness of the evaluation, IEP, and related services provided to Student between date of registration and November 9, 2022.
2. Parent's requested relief of compensatory education is denied and the Parent's due process complaint is dismissed with prejudice.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

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

NOTICE OF RIGHT TO APPEAL

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

Dated: December 18, 2024

/s/ Mary Jo Stusz
Impartial Hearing Office

████████████████████
████████████████████

APPENDIX A

█ v. █ Community Unit School District No █
2024-DP-0059

Identification	NAME	ACRONYM
CHILD	█	Student
Parent	█	Parent
Attending School	█ Elementary School	Elementary School
Witnesses		
█	Adaptive PE teacher	PE teacher
█	Special Education Teacher (Olson)	Teacher
█	Occupational Therapist (Olson)	OT
█	Speech-Language Pathologist/Assistant Technology Facilitator	SLP-AAC
█	School Psychologist	Psych
█	Summer School Principal	ESY Principal
█	Speech Language Pathologist	SLP-ESY
█	Occupational Therapist	OT-ESY
█	Former Special Education Coordinator	SPED Coordinator
█	Director of Special Services	Director
2022-23 District Associates in █'s classroom █ (Spring 2023)		CN EP MW JT MC

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

I the undersigned, Mary Jo Strusz, certify that on December 18, 2024, 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:

Parent:

[REDACTED]

USPS #70212720000108017323

District:

[REDACTED]

USPS #70212720000108017330

Illinois State Board of Education:

Mr. Andy Eulass
Due Process Coordinator
100 N. First St.
Springfield, IL 62777-0001
AEulass@ISBE.net
USPS#7021 2720 0001 08017324

December 18, 2024

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

[REDACTED]