

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

BEB, a minor, by and through
His/Her Parent,
Student/Petitioner,
v.

Case No. 2024-DP-0105

██████████ 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 a Student with a disability ("Student"), a thirteen-year-old student who is eligible for special education and related services under the primary category of intellectual disability ("IntD). Student was initially found eligible for special education services on August 23, 2013. Student has an IEP and was unilaterally placed by the Parents in home school on January 6, 2023.

On December 1, 2023, the Petitioners requested a due process hearing ("Complaint") seeking an Order from this Hearing Officer determining the District had committed a violation under the individuals with disabilities education act ("IDEA") including, but not limited to, a child find violation, denial of a free appropriate public education ("FAPE"), and failure to provide an appropriate educational placement. (IHO Ex. 1). This Hearing Officer was appointed on December 4, 2023. (IHO Ex. 3). The District filed a Response on December 8, 2023 (IHO Ex. 7) which denied all allegations raised in the Parents' Complaint and affirmatively alleging it had identified all of Student's special education needs, and provided Student with a FAPE at all times and has attempted to provide a FAPE through a therapeutic day school placement.

The Parties participated in mediation on January 24, 2024 (IHO Ex. 11). A prehearing conference was scheduled for January 24, 2024 (IHO Ex. 8) but was continued due to mediation. The Order extending the 45-day decision date and rescheduling the prehearing conference was entered on January 24, 2024. (IHO Ex. 11).

The first Prehearing Conference was held on March 5, 2024. At the prehearing conference the Parties agreed to schedule the hearing on April 30, May 2, and 3, 2024. (IHO Ex. 28). On March 18, 2024, a motion was filed requesting an extension of the 45-day decision date to accommodate the agreed upon hearing dates (IHO Ex. 19), and the Order extending the decision date to May 17, 2024, was entered on March 18, 2024 (IHO Ex. 20).

The second prehearing conference was held on April 3, 2024 (IHO Ex. 24). The Prehearing Report and Order was issued, following the statutory review period, on April 12, 2024, and the Parents' Amended request for compensatory education was added as exhibit C on April 15, 2024. (IHO Exhibit 28.)

The Parents opted for a closed hearing.

The Due Process Hearing was held, using Zoom© technology, on April 30, May 2, and May 3, 2024. It was a closed hearing. Matthew Cohen and Jill Calian from Matt Cohen and Associates represented the Parents. Courtney Stillman from Himes, Petrarca & Fester, CHTD represented the District. A court reporter was present.

The Parents presented seven witnesses and the District presented eight witnesses.¹ The Parties presented a stipulation of fact, identified as IHO Exhibit 38. Following the proceeding on May 3, 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 1,2,4,7,8,10,11,12,14,17,27,29,31-35,41,44,48,49,73,74,85,88-94,98-100 were admitted into evidence. District's exhibits 1-6; 8-12; 14,15, 18-22; 24-31; 33-36; 39,41, 42, 44, 45, 47,51-59; 61-65, 66 is parent 31, 67-85 were admitted, as were Joint Exhibits 1-47.

The Hearing Officer's Exhibits are IHO Exhibits 1-44. Both parties submitted oral closing statements and a written outline thereof. Both Parties presented copies of any case law relied upon.

ISSUES

I have determined that I have the authority to hear the issues listed below.

Issue 1. Whether the District committed a child find violation of the IDEA and Illinois Law when it failed to conduct an assistive technology evaluation for Student beginning December 1, 2021, and continuing through the 2023-2024 school year, although Student displayed communication challenges?

Issue 2: Whether the District failed to consider the input on Student's progress, provided by Student's occupational therapist, speech and language therapist, and academic tutor which impeded Student's right to FAPE because the IEP team failed to revise Student's individualized education plan ("IEP") goals to reflect Student's progress when developing Student's December 9, 2022, April 26, 2023, and October 23, 2023 IEPs?

Issue 3: Did the District deny Student a FAPE during the period beginning on December 1, 2021, and continuing through the 2023-2024 school year, when his IEPs failed to provide appropriate special education supports and services, including:

- a. failure to provide an assistive and augmentative communication (AAC) device appropriate to allow him to communicate his needs;
- b. inadequate support for the use of assistive technology, such as an AAC device;

¹ Witnesses are identified in Appendix A.

- c. inadequate social work, physical therapy, and speech and language therapy minutes;
- d. failure to provide any special education instruction or related services from January 10, 2023, to the present.

Issue 4: Did the District deny Student a FAPE when it failed to conduct proper Functional Behavioral Assessments (“FBA”) or to implement Behavior Intervention Plans (“BIP”) with fidelity beginning on December 1, 2021, and continuing through the December 31, 2022?

Issue 5: Whether the District denied Student a FAPE when it allegedly failed to consider the findings and recommendations of P-BCBA (private BCBA September 2021-present), P-Tutor (private academic tutor 2023-present), P-SLP (private Speech/language therapist May 2019-present) and P-OT (private Early Intervention 18 months-present occupational therapist) that would have provided Student for FAPE.

Issue 6: Whether the District, beginning in December 2021, significantly impeded the Parents’ opportunity to meaningfully participate in the decision-making process regarding the provision of FAPE to the Student by:

- a. Ignoring the Parents many concerns regarding Student’s “IEP, BIP, related services and school placement.
- b. Failing to place Student in his least restrictive environment which denied Student access to his general education peers.
- c. Failing to provide Parents, within three school days prior to the IEP meeting, with copies of all written material that will be considered by the IEP team, specifically the records used to update Student’s FBAs and BIPs.

Issue 7: Whether ██████ Academy ██████ is an appropriate setting to implement Student’s IEP.

Issue 8: If the District has denied Student a FAPE, whether the Parents’ unilateral placement of Student in homebound on January 6, 2023, provides Student with an appropriate placement that is reasonably calculated to enable the Student to receive educational benefits and provides educational instruction specially designed to meet the unique needs of the Student?

If so, whether the balancing of the equities weigh in favor of the Parents or the District after considering the following factors?: 1) Did the Parents provide the School District with timely notice, at least ten (10) business days prior to the removal of the Student from the public school, of Parents’ rejection of the School District’s proposed placement, including Parents’ concerns and intent to provide Student homebound services at public expense; 2) Whether, prior to the removal, the Parents made the Student available to the District for evaluation; 3) Whether the Parents’ actions were reasonable; 4) Whether the cost of the private placement is unreasonable; 5) Whether there was a lack of parental cooperation with the School District.

To remedy the issues identified above, the Parents requests this Impartial Hearing Officer order the following relief:

- 1) The District shall develop an IEP for Student, in conjunction with his private clinicians and the Parents, which includes all appropriate goals, short-term objectives, direct instruction, supplementary aids, and related services, and placement in accordance with item 2, below;
- 2) The District shall assume full financial responsibility for all expenses associated with Student's homeschool placement until an appropriate, mutually agreeable therapeutic day school is located and accepts Student, including without limitation tuition and transportation costs and ESY services;
- 3) The District shall provide Student with a NovaChat 8 AAC device, and shall provide Student and any staff who work with him with all necessary training and ongoing instruction on how to use the device, as guided and recommended by Students P-SLP, if available;
- 4) The District shall reimburse the Parents for their costs to provide Student with home schooling beginning in January 2023 and continuing through to the present, including costs for an academic tutor, occupational therapist, speech and language pathologist, and a Down Syndrome specialist;
- 5) The district shall provide compensatory education to account for its denial of FAPE. Beginning on December 1, 2021, and continuing through the 2023-2024 school years;
- 6) The District shall reimburse the Parents for the cost of the private evaluations prepared by P-BCBA), and any future private evaluations conducted in connection with Student's education., including but not limited to, evaluations by an occupational therapist and or/a speech and language pathologist; and
- 7) Such other relief as the impartial hearing officer deems appropriate.

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 Parents' attorneys and the District's attorney this Hearing Officer's Findings of Fact are as follows:

BACKGROUND

1. The Student is a thirteen-year-old male who is currently a home-schooled 7th grade student following his Parents' decision to make a unilateral placement on January 6, 2023 and turn down the District's offer of a Therapeutic Day School ("TDS") placement.(Mother). He qualifies for

special education services under the disability category of IntD. (Mother) Student has a diagnosis of Downs Syndrome/Trisomy 21 (“Downs”), which impacts his cognitive ability and his fine and gross motor skills. (Mother). Student was diagnosed with Leukemia in January 2014 and is currently in remission after treatment. (Mother) Student is social, funny, loves sports, drama, dance, and singing. Student participates in a special recreation association. (Mother). Student loves and is very protective of his Mother. (Mother). Mother is one of Students preferred things. (P1-BCBA).

2. Student entered the District’s special education cooperative² (district █████ when he was three years old, 2013, in the early intervention program. He received occupational therapy, physical therapy, speech therapy, and developmental therapy. (Mother) .
3. Student has an expressive, receptive, and social language disorder, secondary to Downs. (P-SLP and PE1-003). Student’s receptive language is much higher than his expressive language which impairs his day-to-day function often causing frustration. (Mother) Student struggles with reading, decoding, phonemic awareness, writing, pragmatic and expressive language.
4. Student has an articulation disorder, phonological disorder, interdental and lateral lisp impediments, and In 2017, first grade, was diagnosed with a mild bilateral hearing loss which does not require his being aided. (Mother, P-SLP, and JE2) The hearing loss in combination with Student’s speech impediments necessitates Student have assistive technology, specifically an augmentative alternative communication system (“AAC”). (PE1-003, P-SLP). In response to the hearing impairment diagnosis, District █████ issued Student an iPad to assist with Student’s speech and communication. The iPad was loaded with the word Power 40 basic vocabulary set in the TouchChat app. (JE4-12) The iPad remained with Student and was available for his use at home, in the community, and at school.(Mother).
5. Student’s speech is understandable, but can be challenging for an unfamiliar listener, so Student uses his AAC device to help others understand. (Mother)
6. In the summer of 2018, Parents engaged the services of a speech/language Pathologist (Mother and P-SLP) who had extensive experience with AAC including assessing students’ ability for AAC, implementing ACC, recommending AAC state evaluations, training students, teachers, and paraprofessionals on AAC usage. (P-SLP, PE 88-001) The P-SLP provided limited (6 sessions per summer) support in 2018 and 2019, and beginning on July 14, 2020, began seeing Student weekly. (P-SLP, PE1-001) Student’s sessions were increased to twice a week in January 2023 and remain at that level at the time of the hearing. (P-SLP)

HISTORY PRIOR TO THE STATUTE OF LIMITATIONS (December 1, 2021)³

7. In February 2021⁴ Student returned to a self-contained 4th grade ACCESS classroom (JE-1). Student’s annual IEP meeting was conducted, via Zoom, on April 13, 2021, Student’s BIP was discussed and reviewed. Parent requested a consultation with an outside BCBA (JE2-33), and

² The cooperative includes the multi-needs and autism programs. (D-Director testimony).

³ During the status conference on December 11, 2023, the District raised the potential statute of limitations (“SOL”) issue, the Parties agreed to discuss the SOL issue at the prehearing conference and to set a briefing schedule, if necessary, on SOL at that time. (IHO Exhibit 8-J) During the prehearing conference on March 5, 2024, the Parents declined the opportunity to brief the issue and conceded to limit the timeframe to December 1, 2021.

⁴ Return after Covid.

the District requested a behavioral consultation from District [REDACTED] Special Education Cooperative in April 2021 (Stipulation 1, IHO Exhibit 38).

8. Student participated in ESY 2021, behavior data was collected by the D-BCBA (JE19-1), but at Parents request, the summer data was not considered in Student's FBA or BIP in the fall of 2021(JE4-49).
9. There was an increase in the intensity of Student's behaviors in the fall of 2021, behaviors were noted in both school and home, and Parents hired P2-BCBA to complete an assessment. (PE-2)
 - a. Home behaviors included aggressive hugging/touching, property destruction and failure to follow instructions, and rigidity. (P-2)
 - b. The school behaviors included disrobing, defecating, urinating, elopement, flopping, and property destruction. (Mother, JE3-1). Student was placed in a safe room, physically restrained, and received several suspensions. (Mother, JE20, JE21, JE22).
 - c. Student's previous BIP was implemented while additional observation data was collected, and D-BCBA consulted with Parents' BCBA's. (D-SW testimony) In addition to the District employees and D-BCBA, Parents' P1-BCBA and P-2 BCBA⁵s were observing Student, providing input and were assisting with the FBA update. (Mother).
 - d. Behavior data was collected during ESY 2021, but at request of Parents, the team agreed to focus on behavior data collected from the beginning of the school year. (JE4-46)
10. A virtual IEP meeting was held on October 18, 2021. (JE4)
 - a. D-BCBA provided Parents with the proposed update to Student's FBA (JE-3) and BIP. (JE4-46). Parents email their recommendations on October 17, 2021. (JE4-46) D-BCBA could not attend due to a family emergency and was excused. (JE4-46) Parents recommendations were discussed. (JE4-46) Student's FBA was reviewed (D-SW, JE4-34) Student's strengths were identified. (JE2-34) Students target behaviors were identified as non-compliance, aggression (verbal/physical) , elopement, property destruction, flopping, disrobing, and inappropriate touch. A description of the behavior, setting, antecedents, consequences environmental variables and hypothesis were identified. The change in location of the ACCESS classroom was discussed, along with Parents' concerns that the location was unsafe for Student. (JE4-46-47). Additional Parent/Parent BCBA's concerns were identified and discussed. (JE4-46-47). There is no chart of ABC data in the FBA (D-SW testimony)
 - b. Student was provided with four speech/language goals. (JE4-11,13,14,17) Student received 360 minutes per month of direct and 10 minutes per month of consultative services. (D-SLP, JE4-12-16). Consultative services include device backups, adding additional information, and communication discussions with Student's teacher. (D-SLP)
 - c. The meeting was interrupted when Student disrobed, and Mother went to the school to help manage the incident. (JE 4-47, Mother).
11. The continued October 18 IEP meeting resumed on October 20, 2021 (JE4-32, JE4-48), the D-BCBA was excused by the IEP team because her findings were already reviewed by the team (JE4-49).
 - a. Parents' BCBA's recommendations were reviewed and discussed (JE4-46). The D-BCBA's report was shared and reviewed.

⁵ P2-BCBA only worked with Student for 6 weeks in September-October 2021.

- b. Both the D-BCBA and the Parents' BCBA's agreed on the functions of the behavior. (JE4-49).
 - c. The FBA recommends a placement "in a self-contained special education classroom with a small student to staff ration, the support of a 1:1 staff, modified instruction in all academic areas, and programming to incorporate functional academics, daily live skills, life skills, pre-vocational skill, and ongoing communication development." (JE3-1.)
 - d. Student had no behavior issues in general education art and physical education classes. (JE4-47).
 - e. Student uses his AAC device and PEC communication boards.(JE3-2). The team discussed the need to provide Student with functional communication training to use his talker (JE4-49).
 - f. Student's BIP was extensively reviewed and discussed. (JE4-49-50). The Parents' BCBA's gave their feedback. (JE4-50).
 - g. Student's placement in the special education classroom in a general elementary school could no longer meet his needs and his placement was changed to a TDS. (Mother).
 - i. Student's behavior is impeding his academics. (JE4-50).
 - ii. Four different BCBA's have been involved in assessing Student's behaviors. (JE4-50).
 - iii. Parent's advocate reviewed the Student's behavior data and determined in appropriate touching, and urinating on staff behaviors are still escalating. (JE4-50)
 - iv. Parents BCBA's determined the physical program location in the general education school is a safety concern. (JE4-50).
 - v. It was determined the District was unable to implement the behavior plan.
 - h. Student's program was modified to the highly structured program for students with special needs at H-TDS. (JE7-24). The classroom and staff working with Student will be trained on how to use Student's ACC and how to implement the BIP. (JE7-24).
12. Student did not return to the District school after October 20, 2021. Homebound services started on October 25, 2021, and were provided until a TDS location was identified (Mother testimony, JE4-51). During homebound, the District provided Student with academic tutoring of one hour per day (Mother), speech/language services (D-SLP, Mother), and Physical therapy (D-PT, D59). The District offered social work services; the potential provider was rejected by the Mother.(Mother). Student did not receive social work services. (Mother). Student did not display negative behavior during speech/language services. (D-SLP) Student received occupational therapy (P-OT) at District expenses. (D-Director). Student displayed dysregulated behavior, especially during the academic instruction, which took place in the late afternoon. (Mother). Student missed five (5) hours of academic instruction due to the unavailability of tutors. (D-9, Mother).
13. After the October 2021 meeting, and before placement at H-TDS, the District referred the Student for placement at eighteen schools, cooperatives and facilities. (Stipulation #2 IHO Exhibit 38)
14. Three possible TDS placements were identified(D-Director). Parents delayed the TDS placement process by failing to respond, return releases, and delay touring programs. (D9-1).

15. Mother toured H-TDS with a District representative, finding it inappropriate due to lack of peer role models, no full time BCBA, and potential multi-needs program more restrictive than Student required. (Mother and PE-27).

PLACEMENT AT H-TDS (12-2021 THROUGH 12-2022).

16. An intake meeting for H-TDS was held on Friday, December 10, 2021, and Student began attending H-TDS on Monday December 13, 2021. (Stipulations #3 IHO Exhibit 38) Placement was based on the District's experience with students who had similar behaviors whose needs were met at H-TDS. (D-Director). Student's placement was in the middle school multi-needs classroom. (JE8-3). Student received 300 minutes per month of Counseling Services (20 consult); 370 minutes per month of Speech language services (10 consult), 120 minutes per month of physical therapy, and 300 minutes per month of social work (20 consult). (JE5-2). A Notice of Change dated December 13, 2021, identified that Social work minutes will now be listed as school counseling in Student's IEP. (JE5-1).
17. H-TDS did not have a physical therapist, so the District physical therapist went to H-TDS to provide Student's IEP services. (D-PT) The H-BCBA is not on campus every day, she is present 2-3 days per week and supports 2-3 other associated campuses. (H-BCBA)
18. A TDS 30-day review meeting, to review and revise goals and services in the new educational environment, was held on February 23, 2022, the draft copy of Student's IEP was provided to the Parents on February 14, 2022. (D-Director, D11-1). The placement went well. (Mother testimony).
 - a. Student's need for an AAC system, as specified in the IEP conference of 10/18/21, was verified. (JE7-7). Students April 2021 IEP goals were reviewed (JE7-10-18)
 - b. The H-SLP could not recall attending the meeting . The evidence in the record states H-SLP recommended Student's speech/language services be reduced to 120 minutes per month based upon her plans to directly target Student's expressive language and social/pragmatic language skills. (JE7-32, JE7-25).⁶ The number of speech/language goals was cut from four to two (JE7-17,18)
 - c. ESY was provided. (JE7-27)
 - d. Student's 10/18/21 FBA/BIP was reviewed and is incorporated. (JE7-33-38). The BIP provides positive supports and specifies Student benefits from speech language therapy. (JE7-35). Additional strategies and positive supports are provided for, including a 1:1 staff member. (JE7-35).
 - e. Parents signed the consent for Student's triennial evaluation. (JE6-2).
19. Student received his triennial evaluation, which was considered at an IEP meeting held on April 11, 2022.
 - a. Student was observed on two occasions to determine his functional performance. Student brought his communication device to the first session, but chose to communicate through gestures and verbalization. Student did not bring his device to the second session. (JE1-4). Student had his current folder of laminated images which were attached in a movable format of token stars and reinforcers was utilized.

⁶ The October 18, 2021, IEP provided 360 minutes of speech language services. See 10b above.

- b. Student's triannual Receptive, Expressive & Social Communication Assessment was completed by the D-SLP on March 25, 2022. (D-SLP, JE1-16,33) Student was evaluated using portions of the Receptive, Expressive & Social communication Assessment Elementary (RESCA-E) (JE1-16).⁷ D-SLP specifies the evaluation is based, in part, upon the P-SLP's evaluation completed on December 27, 2021, which was reviewed and identified as a data source. (D-SLP, JE 1-16, 33) Student utilized the Word Power 42 Basic vocabulary set in the TouchChat app on an iPad as a backup to his speech. (JE1-16)
- i. Both the D-SLP and H-SLP attended the meeting.
 - ii. Student occasionally uses a pacing board to elicit longer sentences, consistently uses 2-word phrases to communicate spontaneously, and no longer uses signs or AAC within therapy to communicate his wants and needs. (PE1-001-2).
 - iii. D-SLP relied on the P-SLPs evaluation of Student's articulation skills, Student's total score was 59, which suggest that his speech intelligibility is considered "unintelligible", Student's Word Articulation Score was <50 which is considered severe. The Standard score corresponding to a Percentile Rank of <0.1. (JE1-36).
 - iv. H-SLP drafted two goals for Student, the first includes using his communication device & /or verbalizations to make requests/choices, answer questions and ask for help/gain attention. (JE8-16). H-SLP did not recall whether it was her recommendation to leave Student's speech/language minutes at 120 minutes per month. (H-SLP testimony).
- c. Student was assessed using the Vineland Adaptive Behavior Scales-third edition (Vineland-3) which focuses on what a Student does in daily life.⁸ The adaptive functioning is compared to that of others of the same age.⁹ The Vineland-3 Domain-Level Parent/Caregiver form was completed by the Mother on April 4, 2022, and Student's score was 65 and the percentile rank for this overall score is 1. (JE1-4)
- d. Student's physical therapy evaluation was completed by the D-PT, she determined Student is fully participating in PE and has shown significant gains in strength and endurance resulting in improved gross motor abilities. D-PTs recommended a transition from direct physical therapy services to 30 minutes per quarter of consultative services. This request was approved by the team and implemented on April 14, 2022. (D-PT, JE1-25,26)
- e. Student's social work services (counseling services) remained at 300 per month. (JE8-25)
- f. Student was provided with 7 goals, goal 6 is Speech Language Goal which specifies using [Students] communication device the speech-language Pathologist working to utilize his device (iPad) more across many settings. (JE8-16-17, JE16-4,5, JE18-3)
- g. Parents requested Student's goals record progress with verbal and device communication, and not include sign language as most people do not understand sign language. (JE8-32)

⁷ JE1-16 It was noted that the results for this assessment should be interpreted with caution as the normative sample in which this assessment was normed is comprised of typically developing students and student that do not use communication devices. JE1-17.

⁸ JE1-4.

⁹ JE1-4.

20. H-TDS tracks behavior data using a 15-minute data count, if behavior is observed it is identified, if there is no data it is left blank, behavior was tracked from Student's first day at H-TDS, (H-BCBA, JE-12). Student's data was tracked by the classroom staff and was managed by an H-therapist.¹⁰ (H-BCBA). H-BCBA received Student's referral for services on May 22, 2022 due to a significant increase in Student's classroom behaviors. (H-BCBA). H-BCBA created a graph of Student's behavior, disrobing was added to the graph in June 2022, inappropriate urination in August 2022, and inappropriate bathroom behavior in September 2022 (H-BCBA, JE23-3, JE24). H-BCBA never reviewed Student's BIP and did not observe Student until September 2022. (H-BCBA).
21. Following ESY 2022, Student's behaviors began to significantly increase. (Mother testimony)
- a. Student's behaviors included eloping, property destruction, aggression, urination, and defecation.(H-BCBA)
 - b. Student began to display some of the behaviors at home. (Mother testimony). H-BCBA requested an in-home preference inventory, which was completed and returned promptly by Mother. (H-BCBA, D15).
 - c. H-BCBA observed Student on September 14, 2022, September 21, October 19, and October 29, 2022. (H-BCBA). H-BCBA used scatter plot data to identify patterns and trends, not ABC data. (H-BCBA). After completing an observation H-BCBA created observational notes with recommendations and interventions for the staff to implement and provided staff training. (H-BCBA, JE25, JE26, JE27). This included instituting a blocking technique to prevent Student from disrobing (H-BCBA, D-18) . The treatment team held monthly meetings to discuss strategies and what is and is not working. (H-BCBA).
 - d. Student was observed, at H-TDS, by the Head of H-TDS ABA department, and by the P1-BCBA. (H-BCBA, JE9-2, D-17-1). Student's H-BCBA and Private BCBA's communicated often. (H-BCBA).
22. A virtual IEP check-in meeting was held on October 17, 2022, to discuss behaviors observed at H-TDS by both P1-BCBA and H-BCBA. (JE9-3)
- a. Spitting at someone was added to observed aggression. (JE9-3)
 - b. Motivation and a new rewards program were discussed. (H-BCBA, JE9-3). Increased use of peers, stopping staff rotation, staff not responding to crises (to minimize attention seeking from preferred staff), and using a dedicated, rather than rotating, staff person were discussed. (H-BCBA, JE9-3-4)
 - c. Student's aggression and inappropriate bathroom behaviors, and attempts to disrobe were reviewed. H-TDS staff was not restraining him during these behaviors. H-BCBA in conjunction with P1-BCBA proposed a long list of interventions and rewards in hope the behavior would decrease, (JE-9) Behavior strategies employed include, rewards, challenges, competitions, waiting out the behavior, line leader, peer interactions. (JE-9-2). When one behavior subsides another takes its place. (JE9-2)
 - d. Student's language significantly improved.(Mother) Student was doing an exceptional job using his device (JE9-4) Student was using a Picture Exchange Identification System ("PECS"), a choice board, and his AAC device (JE9-4). Parents requested an increase in

¹⁰ Who did not testify.

speech/language services from 30 minutes per week to 120 minutes per week (Mother, JE9-3) the H-SLP disagreed with this level of service because she believed it was more important for Student to be with his peers, (H-SLP) and taking Student out of class for 120 minutes per week was not functional. (JE9-4). The IEP team agreed to compromise at 60 minutes per week, based on the recommendations of the H-SLP (Mother, H-SLP, and JE9-4).

- e. H-SLP did not believe Student's communication impacted his behavior. (H-SLP).
23. A virtual IEP behavior check-in meeting was held on November 2, 2022, at Parents request, to discuss an increase in physical restraints. (Mother, JE10-2). In addition to H-TDS staff, representatives from the District, Parents, P-Advocate, and P1-BCBA were present. This was a follow up to the October 17, 2022, meeting.
- a. Parents requested additional BCBA staffing and ABC data tracking. (JE10)
 - b. Student added new and intense behaviors, resulting in being restrained up to 5 times per day. (JE10).
 - c. H-BCBA, and the H-BCBA supervisor indicate placement is not working. (JE10) H-BCBA agreed with the IEP team's decision to discharge Student. (H-BCBA).
24. When H-TDS indicated it could no longer meet the Student's behavioral needs, D-Director sent a referral for the Student's placement to the facilities listed in a November 9, 2022, email to Student's mother [eleven facilities]. The possible placements, responses and follow-up were stipulated. (Stipulation #4, IHO Exhibit 38) Only one placement accepted Student and had an available position, MTDS. (D-Director)
25. H-BCBA's implemented and suggested interventions, but never completed a new FBA or a BIP prior to Student's discharge. (TDS Director)
26. The District received a discharge letter from H-TDS on November 10, 2022, but H-TDS agreed to allow the Student to attend the School through December 21, 2022, the day before winter break. (Stipulation #5- IHO Exhibit 38). It was a 30-day discharge letter (JE11-35).
27. Between October 20, 2022, through December 19, 2022, Student was dysregulated to the point of requiring physical restraint because he was deemed to be a danger to himself or staff on fifteen (15) different school days, with many incidents happening more than one time per day. (JE28, JE29, JE 30, JE 31, JE 32, JE 33, JE 34, JE 35, JE 36, JE 37, JE 38, JE 39, JE 40, JE 41, JE 42)
28. A facilitated IEP meeting was held on December 9, 2022. The facilitator provided the Parents and District with the agenda (D-Director and D29-2). The purpose of the meeting was to discuss Parent questions and concerns (increasing Student's time in Gen Ed-specials), IEP review and revision discussion, need for a FBA and modification of the existing BIP, Student's placement, and communication. (D29-2).
- a. Parents objected to M-TDS, Parents found the program inappropriate based upon location, type of programming available (life skills) program, student population, and no access to the general education setting. (D-Director, JE11-35).
 - b. Parents requested a blended homebound academic program, with specials in a general education setting. (D-Director JE 11-35). The District offered to consider returning Student to a general education setting for specials once Student's behavior is addressed in the LRE (TDS). (D-Director) The District agreed that if a certified teacher of the "So Happy to Learn" program, or other credentialed teacher can be identified, the District

- would pay the teacher to provide service in Student's home until a new TDS can be identified. (JE11-36).
- c. Parent does not want Student in a life skills program. (JE11-35).
 - d. The District was open to seeking support and development from Downs syndrome specialists suggested by the Parents, the specialist either did not respond or were only willing to work once Student returned to a school program. (D-Director, D-38)
 - e. Parent's advocate itemization of the Parent's concerns was incorporated into the IEP (D-Director, JE-11,47.48). Parents suggested two possible therapeutic day schools, and referrals were sent to both. Student was not accepted to either program. (D-Director).
29. Student continued to present with inappropriate behaviors including disrobing and urinating, these were monitored with ABC data at Parents' request. D35-1.
 30. The Parents have not objected to a therapeutic day school placement, only to the identified therapeutic day school placement with an opening for Student. (Mother).
 31. The District has sent referrals every two and ½ months to every therapeutic day school either the District, Parents, or both, consider appropriate since December 2022- Student has only been accepted at M-TDS. (D-Director).
 32. The District moved forward with a placement at M-TDS because it could implement Student's IEP and BIP, and Student needed to be in school. (D-Director, JE12-1). Parents, through their BCBA, expressed their concerns about M-TDS specifically that the school does not have a BCBA on site daily, class size larger than 10 students, no opportunities of inclusion with neurotypical peers, or a fenced facility or play area. (D-Director, D41-6).
 33. M-TDS is an ISBE approved placement. It has a reintegration philosophy with a goal to get students to use their coping skills to be successful in their home schools. (R.Dir-MTDS).
 - a. There are a maximum of 10 students per class. There are no general education students who do not have behavioral or discipline issues. The program is not research based for students with intellectual disabilities or Downs. (R.Dir-MTDS).
 - b. It is designed for students who exhibit significant social-emotional and behavioral difficulties that interfere with the learning process. (R.Dir-MTDS, D55-3). There is a life skills program. (R.Dir-MTDS)
 - c. A BCBA is on site daily, the paraprofessionals are registered behavior techs ("RBT"). RBTs can be assigned to an individual student. (R.Dir-MTDS).
 - d. The program supports students with AACs and is currently supporting two students who use NovaChat devices. It has two speech language pathologists with AAC experience. (R.Dir-MTDS). The program has a three-tier problem solving and data collection model, the behavior data is individualized based on the student. (Rep.D-MTDS).
 - e. IEPs are implemented by staff with fidelity. (R.Dir-MTDS).
 - f. There is no gym, the program is building a new one. (R.Dir-MTDS). The program occupies a building in a strip mall. (R.Dir-MTDS).
 - g. MTDS can implement Student's October 23, 2023 IEP and the goals, provide the IEPs accommodations and modifications, implement Student's BIP, and can provide instruction and related services, except for a physical therapist which the District could provide. (R.Dir-MTDS).
 - h. MTDS has a position for the Student.
 - i. Field trips are provided and encouraged. (R.Dir-MTDS).

- j. Four of the sixteen teachers are virtual. If a student has issues with virtual learning, they are provided a physical teacher. (R.Dir-MTDS).
- k. There are security guards. (R.Dir-MTDS).

AUGMENTATIVE ALTERNATIVE COMMUNICATION

- 34. Student brought his iPad ACC with him to physical therapy but did not use it and communicate verbally. (D-PT)
- 35. Student had his iPad ACC during speech-language services but would normally respond verbally. (D-SLP). In the fall of 2021, D-SLP trained Student to use the AAC.(D-SLP)
- 36. Student's March 25, 2022, Speech-Language Evaluation Report identifies Student utilizes the WordPower 42 Basic vocabulary set in the TouchChat app on an iPad as a backup to his speech. (D-SLP).
- 37. At H-TDS Student's use of AAC was not formally tracked during academics, he did have his device available, (JE8-3) and the device was used as an incentive/reward. (H-BCBA). At the IEP meeting on April 11, 2022, Parent requested Student's goals record progress with verbal and device communication. (JE8-6).
- 38. Student successfully used the 2017 iPad, without issue, through March 17, 2022 (P-SLP, PE-73, JE 2-12, JE4-12, PE73-001). On that date, Mother notified H-SLP that the iPad strap and screen protector were broken (PE-33, PE-73). Student had never broken the device before. (D75-3). How and when the iPad screen protector and strap broke was never determined. (Mother, P-SLP, D-Director) Student had no AAC device through April 19, 2022, when a new iPad was provided by the District, including an OtterBox durable case. (D-Director, Mother, D-78) The 2022 iPad was unusable because the vocabulary had never been backed up, and the previous district (█) needed to reprogram the original software, this did not occur until May 20, 2022. (Private SLP testimony and PE 73-001) The Student's Private-SLP updated the vocabulary to Student's current levels. (P-SLP)
- 39. Student had never received an AAC evaluation, at an IEP meeting on April 11, 2022, the D-Director initiated a discussion about the Student's need for a newer electronic device, (JE 1-11) Parents shared that concern (JE8-5), and Mother requested an AAC evaluation. (D-SLP, Mother, PE-73). The District made the referral request on April 12, 2022. (D66-1). The AAC evaluation referral packet included questionnaires which Parent completed on May 1, 2022, H-SLP completed on May 19, 2022, and H-Special Ed teacher completed on May 16, 2022. (D-69) Parents returned AAC evaluation authorization to D-SLP on May 9, 2022 (PE-73) and the District made a referral for a state evaluation on May 20, 2022. (P-SLP testimony, PE73-001)
- 40. The iPad was not a dedicated device, so D-SLP set a password which was provided to staff and Parents. (D-SLP). School staff unlocked it for use at school and it was used as an incentive for good behavior. (D-SLP). Without authorization, on the bus, Student was able to unlock the device and use the camera to take photos and watch videos making it inappropriate. (Mother)
- 41. The AAC evaluation was completed through the State on July 7, 2022.(D79, PE-18). The stated purpose of the evaluation was to identify an Augmentative and Alternative Communication ("AAC) device/system would allow [Student] to communicate basic wants, needs, feelings, and medical/safety information to his communication partners across all settings. (PE-18-001). The evaluation results recommended Student use a NovaChat 8 with WordPower 60 basic (PE18-

008) which is “ the same software [Student] was using on the iPad”. (PE73-001and P-SLP, D-SLP). The NovaChat8 was recommended due to Student’s behaviors (PE49) and the inaccurate information that Student had broken multiple cases (PE-18). The difference between the iPad and the NovaChat8 is that NovaChat 8 is a more durable dedicated device with no access to a camera or internet, and has a speaker so the voice can be heard loudly. (P-SLP testimony) The evaluation explains the NovaChat8 is available for a 6-week loan through the IATPs device loan program and the request should be made 7-10 days prior to the device training date. The point person was identified. (PE-18)

42. An email recommending a device trial with the NovaChat 8 was sent to H-SLP on July 7, 2022 (D72-1). The email with the evaluation was provided to H-SLP on July 8, 2022. (D73), she was the only person who received it. H-SLP provided a copy of the AAC evaluation to the Parents on September 12, 2022. (H-SLP, D-74). H-SLP did not notify the District that the evaluation was complete or provide a copy to the District. (H-SLP).
43. The District was not notified of the testing results until December 1, 2022. (D-Director) D-Director did not know the results were available and no one at the District made any attempt to determine if the evaluation had been completed. (D-Director).¹¹
44. Parents provided a copy of the evaluation to their P-SLP, and were provided with written information on ways to trial the device. (D72,73) P-SLP attempted to obtain a loaner NovaChat8 in September 2022, however, the Parents wanted to obtain the NovaChat8 privately through insurance,¹² (P-SLP) this delayed the loan process.(P-SLP)
45. H-SLP never suggested the District fund the device (H-SLP). No one asked the District to fund the NovaChat8.
46. The new (April 2022) iPad was broken twice in the fall of 2022.
 - a. Initially on September 27, 2022 (D-75-3) how it was broken was never determined. (D-Director). The Parent dropped off the broken iPad at the District and received a replacement on September 28, 2022 (D75-2).¹³ A durable case was ordered, (D-Director, D-72, D-75-3), and picked up by the Father on October 7, 2024. The Father refused to sign an acceptance of responsibility contract for the iPad. (D-Director, D77).
 - b. The iPad was broken again on November 14, 2022, by Student at H-TDS. The iPad screen had been shattered during a behavioral incident, rendering it dangerous and unusable (D-Director). After the District was notified of the second incident, it refused to replace the iPad suggesting that a lesser device or PECS cards could be used until Student’s behaviors were under control. (D-Director).
47. Student used PEC folder/visuals in school in December 2022. (JE39-1, JE43-1).
48. In December 2022, the Parents changed to a new insurance company which further delayed the loaner, it was received in January 2023.(P-SLP and Mother) Following the 6-week trial period, the NovaChat8 was purchased privately by Parents, it took weeks to build and did not arrive until August 2023. Student had the loaner during the period January-August 2023. (P-SLP testimony).

¹¹ The ITAP evaluation specifies “Please note: Every effort has been made to complete this submission with the 6-month timeline as required by ILMA.” (D72-2)

¹² Parents initial attempted to get the device through United Insurance, they changed insurance to Blue Cross/Blue Shield in December 2022, so the loaner was not available until January 2023.

¹³Apple care determined it irreparable. (D-Director).

49. The District never provided Student with a Novachat8, or contributed to its cost.
50. Student has his NovaChat during his academic tutoring but does not use it much. (P-Tutor)

PARENTS UNILATERAL PLACEMENT IN HOMEBOUND.

51. On January 6, 2023, the Parents, through their attorney sent an email notifying the District they were rejecting the District placement at M-TDS and have arranged private academic instruction and related services in the home. Parents requested the District assume full financial responsibility for the services as of January 23, 2023. (Mother, D-Director, JE44-1). The District responded through their attorney, by email, that services received by the Student at home are not the least restrictive environment, Student will be unable to make progress on the goals to follow behavior expectations in the classroom, and the IEP and BIP cannot be implement at home. The District denied financial responsibility. (JE45-1).
52. Parents home-school program consists of an academic tutor; a speech-language pathologist; an occupational therapist, nature therapy, recreational and drama activities. (Mother, P-SLP, and PE-94).
- a. P-Tutor is properly licensed, and experienced teaching Students with Downs Syndrome and speech language difficulties (P-Tutor, Mother testimony). P-Tutor is paid \$50 per hour. (Mother, PE94) P-Tutor started working with Student, in P-Tutor's home, on April 24, 2023. Currently P-Tutor provides one hour of academic tutoring per week working on reading, math, journal writing, social studies, and providing community outings.¹⁴ (P-Tutor). Student does exhibit noncompliance or work refusal, but is redirected in 1-3 minutes. Student does not exhibit externalizing behavior. (P-Tutor)
 - b. Beginning in March 2024, Student participates in a nature program for students with disabilities and their parents/caretakers run by Student's P-SLP and P-OT (P-SLP).
 - c. Parents also have Personal Support Workers who assist with childcare, they are paid through a Medicaid waiver. (Mother).
53. Following the homebound placement, Students behaviors diminished. Student still exhibits frustration, but nothing like the behaviors displayed in the school environment. (Mother testimony).
54. Student works well in quiet, familiar locations. (Mother testimony) He accompanies his Parents and caretakers into the community for various activities without incident, and he rarely becomes dysregulated. (Mother testimony). Student feels secure when Mother is present. (Mother testimony).
55. Student's annual review IEP meeting was held on April 26, 2023. The District shared a draft of the IEP with the Parents and the Parents shared updates from their private providers with the District prior to the meeting on April 24, 2023. (D-Director, D-44, JE-13-32).
- a. P-SLP was present and verified Student is trialing a loaner AAC device and is more verbal and communicative. (JE13-54). P-SLP recommends an update to two IEP goals (6 & 7) that were met and two new goals. (JE13-54). P-SLP recommends an increase in speech minutes to 120 minutes per week, which the District documented (JE13-55) and will consider upon a school placement. (D-Director, JE13-32). Student received private

¹⁴ Community outings involve grocery shopping, seeing animals at tractor supply shop, and retail pharmacy stores.

- speech/language services in a clinical-not a home- setting. (JE13-32) the update was appended to the IEP (JE13-54)
- b. Student's private occupational therapy summary was reviewed and appended to the IEP. (JE13-47)
 - c. Student's private BCBA summary was reviewed and appended to the IEP. (JE13-48).
 - d. Student's suggestion of placement letter from his medical providers was reviewed and appended to the IEP. (JE13-52).
 - e. Student's homebound as appropriate placement from private providers was reviewed and appended to the IEP. (JE13-53).
 - f. Student's present levels (PLOPS) for his: Occupational therapy goal was updated to include information from the P-OT (JE13-11), and speech goal based on updates from P-SLP (JE13-13, 15), which were appended to the IEP. (D-Director).
 - g. The District agreed to include the home updates in goal present levels but did not update the goals because Student was not in an academic placement. (D-Director JE13-32).
 - h. Parents advised Student will be getting a new AAC device, through their insurance, in June 2023 and request the District provide an AAC device of Parent's choice. (JE13-32)
 - i. A few recommendations requested by the family's advocate were added. (JE 13-32).
56. The District sent a referral for Student's placement in June 2023 to twenty-four facilities. The possible placements, responses and follow up were stipulated (Stipulation #6 IHO Exhibit 38)
57. Parents registered Student with the District for the 2023-2024 school year. Following registration, another unilateral placement letter was not provided to the District. (D-Director).
58. P-Tutor drafted an undated update to Student's present levels in August 2023 (P-12, JE14-51), the language of P-12 and JE-14 differs P-Tutor attributed this to mistakes and updates prior to an October 2023 IEP meeting. (P-Tutor). The assessment used was the Verbal Behavior Milestones Assessment and Placement Program (VB-MAPP)¹⁵, the VB-Mapp milestone assessment is designed to provide a representative sample of a child's existing verbal and related skills, and contains 270 measurable learning and language milestones that are sequenced and balanced across three language development age levels (0-18months, 18-30 months and 30-48 months, Student scored 126 out of 170 points. (P-Tutor, PE-12). The scoring forms were provided to the Parents. (D-Tutor) The assessments of Student's classroom routines and Group Skills, based upon P-Tutor's observations of Student with other children in her home, at a special summer camp, and in a special rec center program are speculative because Student was not observed in a school setting of any type.
59. A check-in IEP meeting was held on October 23, 2023, at the request of the Parents to update Student's PLOPS and discuss recommendations for appropriate placement options from Student's outside providers. The outside provider reports were provided to the District. (JE14-5)
- a. Student's P-tutor was not present at the IEP meeting, however, P1-BCBA reviewed the Report with the team and based on the report, Student's Academic PLOPs were updated with information from his outside tutor (D-Director, P1-BCBA, JE14-8, 10, 11, 57).

¹⁵ The VB-Mapp is a language and social skills assessment program for children with autism or other intellectual disabilities, portions of the guide are D56.

- b. Student’s occupational therapy PLOP was updated based on limited information, only three sessions since April update, and the April 2023 update was maintained (D-Director, P-OT, JE14-13).
 - c. The speech goals PLOPs were updated to include information regarding Student’s new AAC device Student (JE11-15 D-Director, JE14-15, 17).
 - d. All the Parent provider reports, including proposed goals, were attached to the IEP. (JE14)
 - e. Goals were not updated because Student is not in an academic placement. (D-Director).
60. Following the October IEP meeting, D-Director sent a referral for the Student’s placement to nine (9) possible placements. The possible placements, their responses and District follow up were stipulated (Stipulation #7 IHO Exhibit 38).
61. The District still agrees to place Student in Parent’s preferred TDS, should a position in that placement become available. (D-Director).
62. On February 1, 2024, P-Tutor updated the Teacher Report page from her August 2023 Student’s Present levels report, including all assessment information from the original report but updating that since August 2023 Student’s ability to retain and remember sight words has increased from 30 to 50. (D51-20 and P-Tutor).

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 available a free appropriate public education 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 "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.

The IEP is “the centerpiece of the of the statutes education delivery system for disabled children” *Andrew F. ex rel Joseph F. v. Douglas Ct Sch. Dist.*, No 15-827, 137 S.Ct. 988, 994 (U.S. Mar. 22, 2017), citing *Honig v. Doe* 484 U.S. 305, 311, 108 S.Ct. 592 (1988). A comprehensive plan prepared by a child’s “IEP Team” (which includes teachers, school officials, and the child’s parents), an IEP must be drafted in compliance with a detailed set of procedures 20 U.S.C. § 1414(d)(1)(B). These procedures emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances. The IEP is the means by which special education and related services are tailored to the unique needs of a particular child. *Andrew id.* citing *Board of Ed of Hendrick Hudson Central School District., Westchester City v. Rowley*, 458 U.S. 176 at 181 (1982).

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." *Andrew 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. *Andrew* at 999, citing *Rowley* at 206-207.

The IDEA does not require states to develop IEPs that "maximizes the potential of handicapped children" *Rowley* 458 U.S. at 189, 102 S.Ct at 3042. What the statute guarantees is an "appropriate education, "not one that provides everything that might be thought desirable by loving parents." *Tucker v. Bay Shore Union Free Sch. District*, 873 F.2d 563, at 567(1989).

The Seventh Circuit has ruled that under the Rowley standard, an "IEP passes muster provided that it is ..."likely to produce progress, not regression or trivial educational advancement." *Alex R. v. Forrestville Valley Community Unit School District #221*, 375 F.3rd 603 at 615 (7th Cir. 2004), cert denied, 125 S. Ct. 628 (2004), quoting *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245, 258 (5th Cir. 1997). See also *Richard Paul E. v. Plainfield Community Consolidated School District 202, No 202, 07 C 6911, 2009 WL 995459* (N.D.Ill. April 9 2009) which found a school district did not violate a child's rights under IDEA when an IEP was reasonably calculated to provide him with educational benefits by addressing his behavioral and learning disabilities.) The Seventh Circuit has opined that the "critical issue [is] whether the school administrators were unreasonable" when making placement and service determinations. *School District of Wisconsin Dells v. Z.S.* 296 F. 3d 671, 676 (7th Cir. 2002).

Issue 1. Whether the District committed a child find violation of the IDEA and Illinois Law when it failed to conduct an assistive technology evaluation for Student beginning December 1, 2021, and continuing through the 2023-2024 school year, although Student displayed communication challenges?

A district has an affirmative duty to identify, locate and evaluate students with disabilities *Robertson County Sch. Sys. V. Patrick King Jr.* 99 F3d 1139 (6th Cir 1996). Child find is the affirmative, ongoing mandate for states and local districts to identify, locate, and evaluate all children with disabilities residing within their jurisdiction. The child find requirements in IDEA requires states to have policies and procedures to ensure that all children with disabilities residing in the State who need special education and related services are identified, located, and evaluated regardless of the severity of the disability. 34 C.F. R § 300.111. The Illinois Administrative Code at 23 IL Adm Code 226.100 provides each school district shall be responsible for actively seeking out and identifying all children from birth through age 21 within the district who may be eligible for special education and related services. Further the regulation places the burden on the district to maintain an ongoing review of each child's performance and progress by teachers and other professional personnel, in order to refer those children who exhibit problems that interfere with their educational progress or their adjustment to the educational setting. 23 IL Adm Code 226.100 (a)(2).

A school district is not required to conduct a formal evaluation of every struggling child. *D.K v. Abington School Dist.* 696 F.3d 233 (3rd Cir. 2012). There is no need to do an AT evaluation when school professionals do not believe it is needed, student has AT and the At is incorporated into the IEP. *B.K. v. New York City Dept. of Educ.*, 12 Supp.3d 343 (E.D.N.Y. 2014). In fact, it is a myth that an AT evaluation

must be conducted prior to providing an AT device and service to a child with a disability. Myths and Fact Surrounding Assistive Technology Devices and Services, Myth #4 U.S. Department of Education, January 2024.

The U.S. District Court for the Northern District of Illinois in *Demarcus L. By Dominique L. v. Board of Education of the City of Chicago Dist. 299*, 63 IDELR 13, 114 LRP 1187 (2014) adopted a two-part standard used by the 6th U.S. Circuit Court of appeals in *Board of Education of Fayette County Kentucky v. L.M.* 47 IDELR 122 (2007), that a parent seeking relief for a child find violation must show that the district: 1) overlooked clear signs of disability and negligently failed to order an evaluation; or 2) had no rational justification for its decision not to evaluate the student. This standard was reaffirmed by the Court in *ZJ v. Board of Ed of the City of Chicago District. No. 299* 344 F. Supp. 3d 988 (2018) of IDEA and a student must lose an educational benefit or the parent's right to participate in the IEP creation process for a hearing officer to find against the district.

Each public agency must ensure that assistive technology devices or assistive technology services or both are made available to a child with a disability if required as part of the child's special education under § 300.39; related services under § 300.34; or supplementary aids and services under § 300.42. The term assistive technology device is defined as any item, piece of equipment, or product system, which acquired commercially off the shelf, modified or customized, that is used to increase, maintain or improve functional capabilities of a child with a disability. 20 USC. Section 1401 (1)(A), 34 CFR Section 300.5. An assistive technology service means any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device and is considered a related service. 20 U.S.C. § 1401(2) and (26) (A).

It is uncontested that Student has been receiving speech therapy services since entering an early intervention program at age three. (FF 2) It is also uncontested that Student has a mild hearing loss that in combination with his speech impediments makes it difficult for Student to communicate and be understood by a non-familiar listener. (FF 4,5). Consequently, since 2017, Student's education districts have provided him with low tech and high tech (AAC) assistive technology tools. (FF4,22, 34,35, 39, 47) The appropriateness of the AAC computer software, TouchChat, is not contested, as the computer software recommended by the formal evaluation is the same software Student had been provided. (FF 4,19,36) The sole child find issue is whether the District's failure to perform or initiate an AAC evaluation to determine the best electronic device for Student's use rises to the level of a FAPE violation.

The District admitted that prior to July 2022, no assistive technology evaluation of Student was provided. However, there is substantial evidence the District was fully aware of Student's need for both low tech and high-tech assistive technology which was incorporated into his IEPs (FF 11,)), the Student was successfully using his iPad within the classroom, in both the District school and H-TDS, with both private and district therapists, including his P-SLP, to assist Student with communication without issue. (FF 11,19, 35, 37, 39) Student was using sign language to communicate. (FF19) No professional questioned the appropriateness of Student's AAC until March 2022.

Parents argue, incorrectly, that the District did not provide an AT or ACC evaluation even after it became clear, through three incidents of breakage, that the iPad was not a sufficiently durable device for Student, fails to acknowledge the testimony the iPad screen protector and strap had only been broken once, March 2022, prior to the IEP team discussing the need for an AAC evaluation. (FF38,39). Further,

the evaluation was completed, with results provided to the Parents, prior to the two breakage incidents in the fall of 2022. (FF 42,46) There was no reason for the District or IEP team to question the durability of a device that had survived a child's use for over four years. There is no evidence the Parents or their P-SLP questioned the appropriateness of the iPad prior to April 2022.

Lastly, Parents put forth the argument that the fact the iPad was somehow unlocked and used inappropriately by the Student to take photos and watch videos should have triggered an AAC evaluation. The iPad was password protected. (FF40) The inappropriate use of iPad did not impact Student's ability to use the iPad to assist with communication. Nor was any nexus presented by the Parents indicating the inappropriate use of the iPad led to an increase in Student's behaviors, rather the evidence is clear, watching videos was used as a reward and incentive for good behavior. (FF40)

The Parents have failed to prove by a preponderance of the evidence that the District overlooked clear signs the Student had insufficient technology and negligently failed to order an evaluation or had no rational justification not to evaluate. I find Student's access to and successful use of the iPad for years prior to its first breakage is a rational and reasonable justification for the District's failure to order an assistive technology evaluation prior to the Parents request in April 2022, and did not result in a child find violation or denial of FAPE to Student.

Issue 2: Whether the district failed to consider the input on Student's progress, provided by Student's occupational therapist, speech and language therapist, and academic tutor, which impeded Student's right to FAPE because the IEP team failed to revise Student's IEP goals to reflect Student progress when developing Student's December 9, 2022, April 26, 2023 and October 23, 2023 IEPs?

An IEP that meets the requirements of the IDEA must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F., 137 S. Ct. at 999. To meet this requirement, the IEP team must consider a child's current levels of academic achievement, describe how a child's disability affects his or her ability to perform, and set measurable goals of **academic progress** (emphasis added) for the upcoming year. See 20 U.S.C. §1414(d)(1)(A)(i).

Under the IDEA and its regulations, if parents obtain an IEE and that IEE is shared with the district, the district must consider the results of the evaluation when making decisions involving the provision of FAPE to the child. 34 C.F.R. § 300.502(c). Districts are not required to engage in the "substantive discussion of" parent provided evaluations. *James D. v Bd. of Educ. Aptakisic-Tripp CCSD* 102, 642 F. Supp. 2d 804, 52 IDELR 281 (N.D. Ill. 2009). IDEA requires that the districts periodically review a child's IEP, but not less than annually to determine if whether the annual goals are being achieved and to address any lack of progress, review evaluations, and information provided to or by the parents and to revise the IEP as appropriate to address items reviewed. (20 U.S.C. §1414(d)(4), and 34 C.F.R. §300.324(b).

The IDEA's legal requirements are fulfilled if (1) a school district complies with the law's procedures in developing an IEP, and (2) the resulting IEP is reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances. See *A.C., ex rel. C.C.*, 258 F.3d at 773; *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

The December 9, 2022, IEP meeting was facilitated by a trained ISBE facilitator. (FF 28). The purpose of this meeting was to discuss Parent concerns, which included a long list of concerns, none of

which included revising IEP goals to reflect Student progress. (FF 28). This IEP meeting did not include a discussion of Student's goals, and neither the District nor Parents have presented any argument regarding Student's goals and this issue.

The April 26, 2023, IEP meeting was the first IEP meeting following the Parents unilateral home placement in January 2023. (FF51). The Student's speech language and occupational therapist supplied the District with "present level" information and updated Student's goals relative to their assessment of Student's progress in his private programs. These reports were not only discussed, but Student's present levels were updated based on the private provider reports which are appended to Student's IEP documents. (FF55). A discussion on the recommendation by the P-SLP to increase the Student's speech minutes took place even though this was a moot point as the District had no control over the number of speech language minutes Parents were providing Student during his home placement and any agreed increase would not be binding on the Parents. (FF55) The IEP team made clear that although Student's present levels would be updated, the goals could not be updated because Student was not in an academic placement. (FF55).

The October 23, 2023, IEP was a check-in meeting called at the request of the Parents specifically for the purpose of updating the Student's PLOPs and discussing placement options. (FF59) The reports were appended to the IEP. (FF59). The reports were given considered by the IEP team even though Student had only participated in three OT sessions since April 2023, the OT report was not dismissed, and Student's OT PLOP was updated.(FF59). Student's P-Tutor provided academic updates which were incorporated into Student's PLOPS. (FF59). Student's speech/language PLOP was updated to include information about his use of the new AAC device. (FF59) Once again Student's goals were not updated because he is not in an academic placement. (FF59)

Parents argue that the failure to update Student's goals is causing therapeutic day schools to misunderstand the Student's functioning and interfering with Student's ability to obtain a placement. This argument fails for three reasons: 1) The IEPs clearly acknowledge that updated goals have been provided but are not included due to Student being educated at home; 2) Student's IEPs contain the complete private provider reports including their recommendations for updating Student's goals, and 3) Parents completely dismiss the fact that Student was not placed in a therapeutic placement due to his speech, occupational therapy, or academics. Student's placement was driven by Student's need to learn to control his behaviors so he can access his academics and related services.

By updating the PLOPs and attaching the private provider's reports to Student's IEP, the District has not only fulfilled but exceeded the requirements to develop an IEP that will allow Student to make educational progress once he is returned to an academic placement. The Parents have failed to prove by a preponderance of the evidence that the District's refusal to update Student's goals violated the IDEA or impeded Student's right to FAPE.

Issue 3: Did the District deny Student a FAPE during the period beginning on December 1, 2021, and continuing through the 2023-2024 school year, when his IEPs failed to provide appropriate special education supports and services, including:

- a. Failure to provide an assistive and augmentative communication device appropriate to allow him to communicate his needs; and

A speech/language impairment that adversely affects a student's educational performance is a disability under the IDEA 34 C.F.R Sec. 300.8(c)(11). When developing an IEP, the IEP team must consider whether the student requires assistive technology devices and services. (20 U.S.C. § 1414(d)(3)(B)(v); 34 C.F.R. § 300.324(a)(2)(v). A school district is required to provide any assistive technology devices or assistive technology services, or both that is needed to provide a FAPE to a child with a disability. 34 C.F.R. § 300.105(a). An assistive technology device is defined as any item, piece of equipment, or product system, other than a medical device, that is used to increase, maintain, or improve functional capabilities of an individual with exceptional needs. (20 U.S.C. § 1401; 34 C.F.R. §300.5). The IDEA defines assistive technology services as purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities 20 U.S.C. §1401(2); 34 C.F.R §300.6(b); and training or technical assistance for a child with a disability or, if appropriate, that child's family 20 U.S.C. §1401(2); 34 C.F.R §300.6(d).

Not all assistive technology devices are electronic devices or high tech, the IRIS Center-a technical assistance center funded by the U.S. Department of Education's Office of Special Education Programs (OSEP) categorizes AT devices into low-tech, mid-tech, and high-tech devices. Myths and Facts Surrounding Assistive technology Devices and Services U.S. Dept of Education January 2024. Examples of Low tech include devices that are readily available, inexpensive, and typically do not require batteries or electricity, and high tech are devices that are typically computer based, such as tablets and screen readers. Id. It is important to distinguish between a high-tech device (iPad, NovaChat) and low-tech devices such as picture peps and choice boards.

Parents argument regarding the AAC evaluation and unsuitability of the iPad have already been addressed under the Child Find issue, and the software provided has not been challenged.

Student's assistive technology consisted of low-tech devices, a packing board (FF21), picture PECs, and a choice board (FF22). Student was also provided with a high-tech device, an iPad. There were two periods of time when Student was not provided with his iPad. The first followed its initial break, between March 17, 2022 and April 19, 2022 (which was extended to May 20, 2022, because Student's vocabulary had never been backed up, which was never been explained considering the length of time Student had the device and was using it with school and private speech pathologists). (FF38) Once software was reloaded P1-SLP was able to update it to Student's current level. (FF39). The second, following the third break on November 14, 2022. (FF 46) The District never provided Student with either the iPad or NovaChat after this break.

The controlling Illinois guidance is the *Illinois Assistive Technology Guidance Manual 2019-20* edition, p. 45, responding to the question "If AT is repeatedly damaged, how should the District respond? The answer was: When a team determines that a student needs AT for the purpose of achieving FAPE, the school or district is responsible for ensuring the AT is provided, in working condition, when it is needed. Repeated damage does not reduce the school or district's burden to provide access to the needed AT. Further, it clarifies that districts may apply policies and procedures to recover costs related to such repeated damage in much the same way that costs are recovered for other damaged school owned materials and equipment.

Parents argue that the failure to promptly provide a replacement iPad and the complete refusal to replace the high-tech device, are sufficient to rise to the level of a denial of FAPE. I agree. The District's argument that Student's access to low tech devices was sufficient to provide a FAPE, (FF46) and

arguing that the TouchChat software could be printed and used as a low-tech tool, ignores the fact that Student's April 2022 IEP provides and specifically identifies the use of a "device" meaning iPad as part of the goals (FF19d), not having a high-tech device renders this goal unattainable. On this issue, the Parents have proven by a preponderance of the evidence that the District was responsible for ensuring Student had a high-tech assistive technology, whether an iPad or other replacement device, to use in attaining his IEP goal, and the District's failure to provide this equipment denied Student a FAPE.

b) inadequate support for the use of assistive technology.

The evidence is clear that since 2018 the Parents and Student have been working with a speech language Pathologist (P1-SLP) who has extensive experience working with AAC devices, including training students and teachers in the use of AAC devices. (FF6) Her credentials have not been challenged. This fact does not mitigate the district's obligation to provide Student (and Parents) with the necessary training or technical assistance to assist Student in accordance with 34 CR 300.6 and 303.13(b)(1)(ii). However, it eradicates the Parents argument that the District's failure to train Student and his family in the use of the iPad lead to Student's not actively using the iPad prior to January 2023. Therefore, Parents have failed to prove this allegation by a preponderance of the evidence.

c) inadequate social work, physical therapy, and speech and language therapy minutes;

Parents contend that the Student's IEPs did not provide sufficient specialized instruction in social work, occupational therapy and speech language therapy services from the statute of limitation date of December 1, 2021 through the 2023-24 school year. The term related services is defined as related services [in part] as developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology, physical therapy, and also include social work services in schools. 20 U.S.C. §1405(26), 34 CFR § 300.34 Parents are an essential component of the IEP team and are involved in the IEP development process, which includes decisions regarding the type and amount of related services the child will receive. However, this does not mean that the parents have a veto power over any of the IEP's components, including related services. *Buser v. Corpus Christi Indep. Sch.*, 22 IDELR 626 (5th Cir. 1995), *cert. denied*, 110 LRP 66347, 516 U.S. 916 (1995); and *Hatfield Pub. Schs.*, 34 IDELR 168 (SEA MA 2001).

The evidence is uncontroverted, the District did not provide Student with social work services for eight school days during the 2021 homebound period. The Mother admitted the District had proposed a social worker to provide services, which she rejected. (FF 12). During intake IEP meeting for H-TDS, social work services were provided, however, they were renamed as counseling services. (FF-16) Student was continuously provided 300 minutes of counseling services per month (FF 16, 19d) No evidence was presented that these minutes were changed, that Parents objected, or that the IEP services provided were insufficient. On this issue, finding by a preponderance of the evidence is for the District.

Parents did not contest the fact that the District physical therapist provided Student with homebound services during the December 1-10, 2021 period. (FF12) During the Spring of 2022, the D-PT completing Student's PT evaluation, she presented her findings and recommendations at the IEP meeting on April 11, 2022, the D-PT's credible testimony and determination was the Student had significant gains in strength and endurance and was able to fully participate in physical education. Based on her recommendation the team reduced Student's minutes to 30 consultative minutes per quarter.(FF19). This evidence was undisputed by Parents at hearing. Therefore, on this issue finding by a preponderance of the evidence is for the District.

Student's speech/language services and their impact on Student and his behavior were central issues in this hearing. Parents deep concern over Student's speech language is evident, as they have been providing Student private speech language services since 2018. The evidence established Parents did not challenge the 360 minutes of speech language services provided in Student's October 18, 2021 IEP or Student's four speech/language goals. (FF-10b). This level of service was continued when Student was initially placed at H-TDS. (FF16). The District's D-SLP did not contest the finding of Student's P-SLP evaluation from December 27, 2021, and used that evaluation as a source of data for the Spring 2022 re-evaluation determining Student's speech was unintelligible and his articulation was severe. (FF19). There is no evidence that H-SLP ever read the P-SLP's evaluation.

Inexplicably, based upon H-SLPs unexplained recommendation, at the 30-day review, Student's speech/language goals were cut from 4 to 2, and the speech language services were cut by two-thirds to 120 minutes per month. Attempts were made to clarify this recommendation during H-SLPs testimony, but she could not recall being at the meeting or the basis for her recommendation. (FF 18) Her inability to recall this critical information substantially diminishes her credibility and calls into question the validity of her recommendations. H-SLP was also present at Student's April 2022 IEP meeting, at that meeting Student received two speech language goals, that H-SLP remembered drafting, but again she could not recall if she recommended Student's minutes remain at the 120 minute per month level. (FF 19).

Student's speech/language goals remained at the 120 minutes per month level, until the IEP meeting on October 17, 2022, where following the Parent's request to substantially increase Student's minutes, the H-SLP, without reasonable explanation, acquiesced and agreed to "compromise" doubling Student's minutes to 60 minutes per week (FF22). After consideration of the evidence, I agree with the Parent that the reduction in speech/language minutes from February 2022 through October 2022 did not provide Student with enough specialized instruction. I determine by a preponderance of the evidence that Parents prevail on this issue and Student was denied a FAPE.

d. failure to provide any special education instruction or related services from January 10, 2023, to the present.

It is uncontested that the Parents made a unilateral placement on January 10, 2023, and once the placement was made the District provided no further services. The appropriateness of the placement will be discussed in issue 8.

Issue 4: Did the District deny Student a FAPE when it failed to conduct proper Functional Behavioral Assessments("FBA") or to implement Behavior Intervention Plans ("BIP") with fidelity beginning on December 1, 2021, and continuing through the December 31, 2022?

The IDEA does not define an FBA. Assessments, however, are required to be conducted if the child's behavior or physical status is a concern. 71 Fed. Reg. 46,643 (2006). Under 34 CFR 300.304(c)(4), a child is required to be assessed in all areas related to the suspected disability. Additionally, under the Illinois Statutes the IEP shall include the behavioral intervention plan for the student who has a behavioral issue. 23 ILL Admin. Code Sec. 226.230(b).

The IDEA does not provide substantive requirements for behavioral intervention plans. *D. W. v. Milwaukee Public Schools*, 61 IDELR 32 (7th Cir. 2013). The appropriateness of an IEP "can only be judged by examining what was objectively reasonable at the time [the team created the IEP.]" *B. G. v. City of Chicago Sch. Dist. 299*, 69 IDELR 177 (N. D. Ill, 2017) (quoting *M. B. v. ex rel. Berns v. Hamilton Southeastern Schools*, 668 F.3d 851, 863 (7th Cir., 2011) (internal citations omitted.)

The 7th Circuit has declined to adopt any substantive standards for a BIP since substantive requirements do not exist under the IDEA. *Alex R. v. Forestville Valley Community Unit School District*, 373 F.3d 603 (7th Cir. 2004). The IEP team, however, must consider employing positive behavior interventions, supports and other strategies to address the child's behavior which is impeding the child's learning and the learning of others. 34 CFR § 300.324(a)(2)(i).

In the instant case, Parents allege that the District denied Student a FAPE when it failed to conduct proper FBA assessments to address Student's several dysfunctional behaviors and to implement Student's BIP with fidelity. The testimony and documentary evidence reveals the following: shortly after returning to a classroom, in February 2021, the Student's problematic behaviors necessitated a review of his BIP, and the District responded by requesting a consultation with an outside BCBA. (FF7). It is undisputed that Student's behaviors continued to escalate during the summer and fall of 2021, to the point the Parents hired P2-BCBA to assist. (FF9) There was cooperation between the Parents BCBA and the District's BCBA (FF9). Student's proposed FBA and BIP was sent to Parents, who provided recommendations, (FF 10) which were extensively reviewed and discussed at an IEP meeting on October 18, 2021. (FF10). The FBA recommended a self-contained classroom, small staff and support of a 1:1 staff. (FF11). Both the Parent and the District BCBA agreed that the current location of the Student's special education program in a general education school could not implement the FBA and BIP. (FF11).

After 30 days a meeting was held at H-TDS to review Student's placement in the new environment. It was confirmed Student's October FBA and BIP had been reviewed, and they were incorporated into Student's updated February 2022 IEP. (FF 19) Student's behavioral data was being tracked every 15 minutes and managed. (FF-20). Student had a 1:1 staff. (FF18) When Student's behaviors showed a significant increase in the Spring of 2022, H-TDS requested a consultation with a H-BCBA. It is uncontested that H-BCBA did not review Student's BIP until school started in the fall of 2022. However, she graphed Student's 15-minute behavior data and adjusted the data collection in response to Student's increasing behaviors. (FF-20). She observed Student on several occasions in September and October 2022, collaborating with the P-BCBA and the head of the H-TDS ABA department. H-BCBA communicated often with the Parent's BCBA, and in collaboration they proposed a long list of interventions and rewards. (FF-22). The rewards were mildly effective, and it was noted that when one behavior reduces, another behavior increases, or a new behavior took its place. (FF-22). From 2021-2022, Student was being, or had been, monitored by no less than five BCBA's, two private, one at the District, and two at H-TDS, this is in addition to the considerable list of other social workers, therapists, and educational professionals who were trying to assist in the containment of Student's behaviors so he could access academics.

Illinois law does not have a statute requiring an FBA or BIP to be completed within a certain number of school days.

Parents have tried to argue that because no BIP was developed at H-TDS Student was not provided with FAPE. In support of their argument, they cite *C.F. v. New York City Dept of Educ.*, 62 IDELR 281 (2d Cir. 2014) arguing that this 2d Circuit case supports their position. I disagree. In C.F. the Plaintiffs alleged the department failed to develop an appropriate functional behavioral assessment or behavioral intervention plan, as required by state law. The Court responded to the extent that Plaintiffs' claim rests on the Department's failure to produce a functional behavioral assessment, the claim fails, the Court went on to clarify the production of such an assessment is not required by the IDEA, citing *M.W. ex rel. SW v. NYC Dept. of Education*, 725 F3d 131, 140 (2d Cir. 2013). The Court went on to determine whether the IEP in question adequately identified a student's behavioral impediments and implemented strategies to address that behavior. The Court found it was not based on the plan being vague and was substantively inadequate

because the department failed to consider a 1:1 ratiion placement classroom despite overwhelming evidence student required one.

In this case, the uncontroverted testimony and evidence introduced at hearing establish the District's implemented FBAs and BIPs and H-TDS's proposed FBA and BIP appropriately address or proposed to address Student's dysregulated behaviors which interfered with his access to academics. The preponderance of the evidence goes to the District.

Issue 5: Whether the District denied Student a FAPE when it allegedly failed to consider the findings and recommendations of P-BCBA (private BCBA September 2021-present), P-Tutor (private academic tutor 2023-present), P-SLP (private Speech/language therapist May 2019-present) and P-OT (private Early Intervention 18 months-present occupational therapist) that would have provided Student for FAPE.

Parents argue that the District failed to consider the findings and recommendations of Student's outside providers. The IDEA regulations state that "[a]s part of an initial evaluation (if appropriate) and as part of any reevaluation... the IEP team... must 1) review existing evaluation data on the child including ((i) evaluations and information provided by the parents of the child" 34 C.F.R. § 300.305 (a). The testimony and documentary evidence on this issue was substantial and uncontroverted on this issue: Multiple District witnesses credibly testified during the hearing that they had reviewed the evaluations, updates and recommendations, of Student's outside providers, and these were considered by the IEP team members on several occasions. (D-Director, D-SLP, D-BCBA, H-BCBA,) The IEP team updated Student's present levels of performance based on the information provided by the outside providers, and all of the providers assessments and evaluations were appended to Student's IEP. Although there is no requirement that the IEP team incorporate, or even accept, the recommendations of outside providers. District witnesses incorporated the findings of the outside evaluators into their evaluations. Both District and Parent witnesses testified about the ongoing cooperation between the District and Parent providers. This evidence was undisputed by Parents during the hearing.

Further, during the closing, Parents have limited their argument on this issue to addressing whether the District considered the recommendations of Student's P-tutor, P-BCBA, P-OT, P-SLP, and others when considering and determining that M-TDS is an appropriate location to implement Student's IEP, FBA, and BIP. Parents argue that a bevy of outsiders and private providers have determined M-TDS to be an unsuitable placement for the Student. These providers have expressed a multitude of concerns about M-TDS's lack of daily BCBA availability, larger classes, no opportunity to interact with neurotypical peers, no fenced in play area, lack of a gym, strip mall location, lack of students with AAC devices and other complaints.

Parents have not objected to a placement in a therapeutic day school (FF-30), only to the one therapeutic day school, out of the numerous District applications across almost one and a half years, (FF 13, 56,60) that has agreed to implement Student's IEP, FBA and BIP. The District has heard the Parents and has even offered to move Student's placement to the Parent's preferred TDS, should a placement become available Student has been admitted to M-TDS. (FF-61).

Here the preponderance of the evidence establishes that the District did give full consideration to the findings and recommendations of the Parents providers. Ruling for the District.

Issue 6: Whether the District, beginning in December 2021, significantly impeded the Parents' opportunity to meaningfully participate in the decision-making process regarding the provision of FAPE to the Student by:

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies: (i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 CFR §300.513 20 U.S.C.(d)(3)(E)(ii).

a. Ignoring the Parents many concerns regarding Student's "IEP, BIP, related services and school placement.

Parents have argued about their many concerns about Student's services and placement. These concerns were documented during IEP meets, reviewed and addressed. Parents did advocate for more behavioral data, as a result the District and the H-TDS invited Parents providers to come and observe Student in his TDS placement. Parents outside providers were never excluded from any IEP meetings, their evaluations and reports (even after the unilateral placement) were reviewed, considered and incorporated into the IEP documents. The District acquiesced in obtaining and providing "ABC" data even though it was not the H-TDS's preferred method of collection. Student's IEPs provided Parents would receive information on Student's behavior and activities on a daily basis. When Parents actively sought an increase in Student's speech-language minutes, October of 2022, they minutes were increased, just not to the level Parents had requested. Based upon the totality of the evidence and testimony, I find the Parents contention that they were denied meaningful participation to be without merit. At all times in question the Parents were provided with an opportunity to meaningfully participate in the Student's IEP meetings. By a preponderance of the evidence, I find no procedural violation of the IDEA was committed.

b. Failing to place Student in his least restrictive environment which denied Student access to his general education peers.

The Parents have not contested Student's placement in a therapeutic day school.

c. Failing to provide Parents, within three school days prior to the IEP meeting, with copies of all written material that will be considered by the IEP team, specifically the records used to update Student's FBAs and BIPs.

Parents argue the violation took place on September 17, 2021, which is outside of the Issue certified in this case. I will not address it.

Parents then argue that despite their continued request for their preferred ABC data, it was not received until December 21, 2022, Student's last day at H-TDS. The evidence in this matter is compelling. Regarding Student's behaviors, this District and H-TDS made a supreme effort to cooperate with the Parents, and their providers, regarding the Student's behavior at all times. There is no obligation under the IDEA that the District provide Parents with their preferred data collection methods, and there was no testimony that the scatterplot method or charting were inappropriate data collection

methods for BCBA's to use when assessing a student. I find that there was no procedural violation of the IDEA, preponderance of the evidence to the District.

VII Issue Seven: Whether M-TDS is an appropriate setting to implement Student's IEP.

To begin the analysis, it is important to consider the requirements for a fully compliant IDEA IEP. The IEP must contain the projected date for the beginning of the service and the anticipated frequency, **location** (emphasis added), and duration of those services. 20 U.S.C 1414(d)(1)(A)(i). The IDEA does not define the term "location". See 20 U.S.C. § 1401, nor is it defined in the Illinois Administrative Code 23 Ill. Ad. Code §401.

Parents have not challenged Student's IEP placement in a TDS, Parents are only challenging the District's proposed implementation of that placement at the location M-TDS (where Student has been accepted), alleging that the placement at this location will deny Student a FAPE.

Although the 7th Circuit hasn't addressed the issue of location of services, the District Court predicted that it would interpret "location" as a type of educational setting and held that IEPs do not need to identify the specific location of a student's services. *Brad K. and Jennifer K. v. Board of Educ. of the City of Chicago*, 56 IDELR 197 (N.D. Ill. 2011). The 9th Circuit ruled that the Hawaii ED did not violate the IDEA when it developed an IEP that failed to identify which public high school a 10th-grader with Down syndrome would attend. It held that the "location" of a student's services generally refers to the type of placement as opposed to a particular school. *Rachel H. v. Department of Educ., State of Hawaii*, 70 IDELR 169 (9th Cir. 2017).

Parents are challenging the appropriateness of the specific location the District has identified to implement the Student's IEP. Parents argue the only TDS program that has accepted Student is not an appropriate setting because it has a no decline/no suspension/ no expulsion policy. This argument fails to acknowledge the fact the District has applied at numerous TDS, including those preferred schools identified by Parents and their providers, not just once, but multiple times and Student has been rejected every time. Parents have provided no evidence that the District refused to submit an application for placement to ANY TDS schools they have suggested. The basis for Parents' argument against M-TDS is because M-TDS does not have a full time BCBA on site every school day, does not have a playground, a secure perimeter fence, and is located in a strip mall. Neither Student's current IEP, his FBA, or BIP require the location of services to have a BCBA on site, this is not an educational requirement, it is a Parent preference.

Parents attribute Student's rejection to the District's failure to update goals based on Student's private providers recommendations, but as I indicated earlier in this decision, I have rejected that argument because the District has updated Student's PLOPs and appended a copy of all private provider reports submitted after January 2023 to Student's IEP.

M-TDS Director has credibly testified that M-TDS is not a perfect placement. During cross-examination, she admits the program is not researched based for students with intellectual disabilities or Downs. There is no gym, although M-TDS is currently building a new one. There are no general education peers. (FF-33).

However, M-TDS also has positives. It is ISBE approved. It has a reintegration philosophy to help students use coping skills to be successful in their home schools and is designed for students who exhibit significant social-emotional and behavioral difficulties that interfere with learning. One of Parent's

objections to H-TDS was that there was not a BCBA on site daily, R.Dir-MTDS has testified that there is a BCBA on site everyday. Further, with the exception of a physical therapist, which could be provided by the District, MTDS can fully implement the Student's IEP, including goals, accommodations, and other related services. (FF33).

Parents have presented no evidence that M-TDS cannot implement Student's IEP, FBA, and BIP. Their arguments are based upon location and student population preferences, not on implementation practices. Therefore, I determine by a preponderance of the evidence that the M-TDS would be an appropriate placement to implement Student's IEP and address his behavioral issues.

Issue 8: If the District has denied Student a FAPE, whether the Parents' unilateral placement of Student in homebound on January 6, 2023, provides Student with an appropriate placement that is reasonably calculated to enable the Student to receive educational benefits and provides educational instruction specially designed to meet the unique needs of the Student?

If so, whether the balancing of the equities weigh in favor of the Parents or the District after considering the following factors?: 1) Did the Parents provide the School District with timely notice, at least ten (10) business days prior to the removal of the Student from the public school, of Parents' rejection of the School District's proposed placement, including Parents' concerns and intent to provide Student homebound services at public expense; 2) Whether, prior to the removal, the Parents made the Student available to the District for evaluation; 3) Whether the Parents' actions were reasonable; 4) Whether the cost of the private placement is unreasonable; 5) Whether there was a lack of parental cooperation with the School District.

The Parents have requested the District assume full financial responsibility for all expenses associated with Student's homeschool placement until an appropriate, mutually agreeable therapeutic day school is located and accepts Student, including without limitation tuition and transportation costs and ESY services.

If the Parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school, without the consent of or referral by the public agency a court or hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency has not made a free appropriate public education available to the child in a timely manner and that the private placement is appropriate. 34 C.F.R § 300.148(c).

The critical question becomes whether parents who elect to unilaterally place their child in home-school have any right to services under the IDEA. In Letter to Sarzynski, 29 IDELR 904 (OSEP 1997) OSEP addressed whether the parent of a home-schooled student with disabilities could selectively consent to the services offered in an IEP. It was pointed out that the IDEA contains a section addressing the provision of services to students with disabilities who are voluntarily enrolled in private schools. OSEP stated that if, under state law, a home schooled student was considered a private school student, the district would have to comply with the IDEA provisions regarding voluntarily enrolled private school students. More recently OSEP confirmed their position. Questions and Answers on Serving Children with Disabilities Placed by their Parents in Private Schools, Question I-1 (OSEP 02/2022). In answer to the question: Are home-schooled children with disabilities considered parentally-placed private school children with disabilities? The Answer was: Whether home-schooled children with disabilities are considered parentally-placed private school children with disabilities is determined under State law. If the State recognizes home schools as private elementary schools and secondary schools, children with

disabilities in those home schools must be treated in the same way as other parentally-placed private school children with disabilities.

Following an exhaustive search of Illinois statutes, this Hearing Officer could find no law addressing whether or not home education constitutes enrollment in a private school. In Illinois, the only specific requirement for home schooling is that certain subject areas be taught. 105 ILCS 5/26-1 and 27-1. The Parent has not provided any statute, or case law to indicate that in Illinois home education constitutes enrollment in a private school.

Therefore, even though I have determined that there was a denial of FAPE, I find that in Illinois Parents home school placement does not qualify as a private elementary school. The Parents request for relief under the IDEA for their unilateral placement is denied.

CONCLUSION

Based upon the Findings of Fact and Conclusions of Law, the District denied Student a free appropriate public education (FAPE):

1) When the District failed to provide Student with an iPad or other replacement device, to use in attaining his IEP goal, and the failure to provide this equipment denied Student a FAPE.

2) When the District unjustifiably reduced Student's speech/language special education minutes from 360 minutes per month to 120 minutes per month. FAPE was denied to the Student from February 14, 2022 through October 17, 2022 (Excluding ESY)¹⁶. I also determine that FAPE was also denied when the District "compromised" with the Parents at Student's October 17, 2022 IEP meeting and increased Student's speech language minutes to 240 minutes per month rather than the 480 minutes per month the Parents and their P-SLP were seeking resulting in a denial of FAPE. I have determined the total number of weeks of reduced speech-language services to be 32 weeks.¹⁷

Remedy: At the prehearing conference the Parties discussed compensatory education. The Parties agreed that the qualitative method for compensatory education would be used at the hearing, including the required facts to allow the Hearing Officer to provide compensatory education for each alleged violation in the event there was a determination of a denial of FAPE. In accordance with that discussion, the Parents filed a formal request for compensatory education on April 12, 2024, and an Amended request on April 15, 2024 (IHO Ex. 28-N and 28-U). A general request for reimbursement was presented during Parent testimony (PE-94). No other evidence was presented to substantiate the remedy requested. The Amended Request for Compensatory Education requests 60 minutes per week of speech language therapy. (IHO Ex. 28 U)

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

¹⁶ ESY was excluded for lack of evidence.

¹⁷ This is not an exact calculation, for lack of evidence this is an estimate and shall not be reconsidered.

1. The District is Ordered to Reimburse the Parents for their out-of-pocket cost for the NovaChat 8 Device in the amount of \$395.15. Such payment shall be delivered to the Parent's attorneys at their regular place of business within forty-five (45) calendar days from the date of this Order.
2. The District is Ordered to reimburse Parents for the cost of 32 one hour speech-language therapy sessions to be delivered to Student by professionals selected by the Parents. Parents shall notify the District's Director of Special Education of the name and hourly rate of the provider, within ten (10) calendar days following identification. Bills shall be submitted to the District's Director of Special Education on a monthly basis and shall be paid within sixty (60) calendar days following submission. Services must be completed within one year from the date of this order. Any unused services shall be forfeited.

Dated: May 17, 2024

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

[REDACTED]

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: May 17, 2024

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

EXHIBIT A

NAME	TITLE/DESCRIPTION	ACRONYM
[REDACTED]	PRIVATE BCBA	P(1)-BCBA
[REDACTED]	PRIVATE-BCBA	P(2)-BCBA
[REDACTED]	[REDACTED] Area District [REDACTED] BCBA	D-BCBA
[REDACTED]	[REDACTED]	H-BCBA
[REDACTED]	Private Academic tutor	P-Tutor
[REDACTED]	Private Speech Language therapist	P-SLP
[REDACTED]	District Speech-Language Pathologist	D-SLP
[REDACTED]	DISTRICT PHYSICAL THERAPIST	D-PT
[REDACTED]	[REDACTED] Speech Language Pathologist	H-SLP
[REDACTED]	Private occupational therapist	P-OT
[REDACTED]	[REDACTED] District Social Worker	D-SW
[REDACTED]	District Director of Special Education	D-Director
[REDACTED]	Director of [REDACTED]	TDS-Director
[REDACTED]	Regional DIRETOR [REDACTED]	R.Dir-MTDS

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

I the undersigned, Mary Jo Strusz, certify that on May 17, 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:

Matt Cohen
Jill Calian
Matt Cohen & Associates

[REDACTED]

District:

Courtney Stillman
Himes Petrarca & Fester

[REDACTED]

Illinois State Board of Education:

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

May 17, 2024

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

[REDACTED]