

ILLINOIS STATE BOARD OF EDUCATION IMPARTIAL DUE PROCESS HEARING

MM, a minor, by and through
his/her Parent(s),

Petitioners,

Case No. 2018-340

v.

Evanston Township High School, District #202,

Mary Jo Strusz

Hearing Officer

Respondent.

FINAL DETERMINATION AND ORDER

JURISDICTION

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

PROCEDURAL BACKGROUND

Petitioners are the parents (“Parents”) of MM (“Student”), a twenty-year-old student who has been found eligible special education services under the category of intellectual disability.¹ From the start of the 2017 – 2018 school year through January 30, 2018, Student attended the Evanston Township District’s Transition House Program (“TH”).² For the spring semester of the 2017 - 2018 school, Student attended the Orchard Academy (“OA”), a private therapeutic transition program.³ On March 23, 2018, Parents filed a Due Process Complaint (“DPC”) against the Evanston Township High School (“ETHS”) District # 202 (“District”)

¹ References to the record in this case are designated “R.”

² Id, pages a-b.

³ Id., page f.

pursuant to IDEA.⁴ Parents' are plenary co-guardians of Student in Illinois⁵ therefore have standing to file the DPC on Student's behalf. This Hearing Officer ("IHO") was appointed to preside over this case on March 30, 2018.⁶

The IHO issued an initial status call letter, preliminary and standing orders, on April 2, 2018.⁷ The District submitted a response to the DPC on April 2, 2018.⁸ The parties participated in mediation on April 19, 2018, however the parties were unable to resolve the issues raised DPC during mediation.⁹ The parties each filed their prehearing conference disclosures on April 23, 2018.¹⁰

The initial prehearing conference was a telephone conference call on April 24, 2018.¹¹ During the prehearing conference, the due process hearing was scheduled for July 16, 17, 18 and 23, 2018, Parents were given leave to file reformed issues and additional support for Parents' Issue Four by April 25, 2018, the District was given until April 27, 2018 to respond, and this matter was continued for a second prehearing conference to May 9, 2018.¹² On April 24, 2018, parties filed a joint motion requesting extension of the 45-day hearing decision timeline to facilitate a continuation of the prehearing conference¹³, and this IHO granted the continuance.¹⁴ The initial Prehearing Report and Order was subsequently entered on May 14, 2018.¹⁵

The continued prehearing conference was held over the telephone on May 9, 2018.¹⁶ At the continued prehearing conference, Parents withdrew Issue Four of their DPC. All parties

⁴ Id.

⁵ R-7.

⁶ R-3.

⁷ R-4.

⁸ R-5.

⁹ R-18c.

¹⁰ R-8,9,10.

¹¹ R-18.

¹² Id.

¹³ R-11.

¹⁴ R-13.

¹⁵ R-18.

¹⁶ R-19,22

agreed the due process hearing dates in this matter were to be reset to August 14, 15, 16, and 17, 2018, or alternatively to earlier dates of July 16, 17, 18 and 23, 2018 if the earlier dates become available. The Prehearing Report and Order was entered on May 14, 2018 and a Revised Prehearing Report and Order was entered in this case on May 16, 2018.¹⁷ Subsequently, on June 22, 2018, after a status conference was held¹⁸ an order was entered confirming the hearing dates of August 14, 15, 16 and 17, 2018.¹⁹

On July 26, 2018, IHO sent an email reminder requesting an update on the status of the hearing to the parties.²⁰ The District did not respond.

The parties filed the 5 business day disclosures on August 7, 2018. On August 7, 2018 at 4:51 p.m. the District requested, by email, a status conference to discuss witness availability.²¹ The District supplemented this request with an email on August 8, 2018 at 10:33 a.m.²² Two status conferences were held on August 8, 2018, at 4:30 p.m. and 5:26 p.m. At the first, the late request for a continuance was discussed and the unavailability of hearing dates until late November, 2018. Alternatives, relative to the original hearing dates, were discussed. The District continued to request a continuance. During the second conference, the Parents' indicated that they wished to move forward with the hearing on the dates scheduled. Over the District's objection, the IHO ruled that the case would move forward as scheduled.²³

The due process hearing took place on August 14, 15, 16, 2018 at the Evanston Public Library, 1703 Orrington Ave., Evanston, Illinois. The closing proceeded, by agreement of all

¹⁷ Id.

¹⁸ R-24.

¹⁹ R-25.

²⁰ R26-c.

²¹ R26-c.

²² R26-a.

²³ R36.

parties, by conference call on August 18, 2018. An official court reporter was provided by the District for all hearing dates. The hearing was closed to the public. The Parents presented five witnesses.²⁴ The District called four witnesses.²⁵

There was no stipulation of facts.

At the conclusion of the evidence presentation, documents offered into evidence, by either Party, which were not objected to or which were admitted over objection, were admitted into evidence. IHO admitted the following exhibits:²⁶ For the Parents: P3;²⁷ P4; P6; P7; P8; P9; P11; P13; P14; P15; P-20; P-21; P-22; P-23; P-27; P-28; P-30; P-32; P-36; P-37; P-38; P40; P-41; P-44; P-49; P-50; P-51; P-52; P-53; P-54; P-55; P-56; P-57; P-58. For the District: D-1; D-2-(1,3,4,5); D-3; D-4; D-5; D-6; D-7; D-8; D-9; D-10; D-11; D-14; D-15.; D-16; D-17; D-18; D-19; Joint exhibits JE 1 - 30 were admitted.²⁸ Proposed exhibits submitted at the five-day disclosure deadline but not expressly enumerated above were not admitted into evidence and were not considered in the preparation of this Final Determination and Order.

No written transcript has been provided and this decision is based on the IHO's personal notes and recollection. In rendering this decision, the IHO has considered all documents entered into evidence, testimony by the parties' witnesses, the parties' opening statements and closing arguments, the parties' suggested case law²⁹, as well as independent research. This decision is issued within ten (10) days after the hearing's conclusion, as required by Illinois law.³⁰

²⁴ Personally identifiable information is in Appendix A.

²⁵ Id.

²⁶ Each exhibit is identified by "P" for Parents, "D" for District, and "JE" for joint exhibits and includes the exhibit number and specific page in the exhibit.

²⁷ The Exhibit was withdrawn during the Sped Director testimony and admitted into evidence during the Vocational Counselor testimony.

²⁸ JT 29- and JT-30 were not disclosed at the hearing disclosure date, the parties waived the disclosure requirements and the documents were admitted by agreement of the parties.

²⁹ Copies of the closing statements and the supporting case law were provided to the IHO by the parties.

³⁰ 105 ILCS 5/14-8.02a(g55)(5).

ISSUES AND REMEDIES REQUESTED

Parents' DPC raised the following issues, and this IHO certified the following issues at the PHC for adjudication at the due process hearing:

- I. Issue One:** Whether Student's placement in the District's Transition House Program is the appropriate placement for Student.
- II. Issue Two:** Whether the District denied Student a FAPE by failing to provide Student with useful present levels of performance, appropriate measurable goals and services in the areas of math, reading, vocational skills, speech/language, occupational therapy, and social work from April 18, 2016 to the date of hearing.
- III. Issue Three:** Whether the District, from October 9, 2017 to November 9, 2017, failed to provide Student with related services and accommodations to address Students' needs resulting from a temporary physical disability and, if so, did this failure result in a denial of FAPE to Student.³¹
- IV. Issue Four:** was withdrawn by Parents at the prehearing conference.
- V. Issue Five:** Whether the District denied Student a FAPE by failing to conduct appropriate transition assessments or provide Student with a transition plan tailored to Student's individual needs and interests.
- VI. Issue Six:** Whether Orchard Academy is the least restrictive environment to facilitate Student's academic, functional, and vocational needs.

Parents' DPC seeks the following remedies:

- I.** The District to assume full financial responsibility for all expenses associated with Student's placement at OA, including tuition and transportation, for two years from the date of decision of in this case;
- II.** The District to reimburse Parents for all costs they have incurred related to placement at OA, including tuition and transportation expenses, from February 13, 2018, the date placement began to close of hearing;
- III.** The District shall provide Student with compensatory education in the form of tuition payment and transportation for an additional semester and OA beyond what is ordered above to make up for the deficient instruction and lack of services provided to Student by the District during Student's placement in the District's TH Program; and

³¹ Parents' DPC requested a finding that this issue was a violation of Student's rights under section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act. The IHO has no authority for alleged violations claimed under these laws. Parents are free to pursue these claims in the appropriate forum.

IV. Such other relief as the IHO deems appropriate.

BURDEN OF PROOF

Parents have the burden of proof on all issues raised in their Complaint, as specified above.

Further, the District has a statutory duty to provide evidence that it has appropriately identified Student's special education needs and proposed a program and related services to adequately and appropriately meet those needs.³²

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of counsel, the IHO's Findings of Fact are as follows:

Background

1. The Student is a 20-year old female³³ who graduated from high school in June 2017³⁴ and is currently enrolled in OA at Parent's expense. Student entered the District in August 2014.³⁵ Student qualified for special education services under the disability category of Intellectual Disability.³⁶ Student has received special education services and supports throughout her educational career.³⁷
2. Student was diagnosed shortly after birth with Kabuki Syndrome, which effects Student's cognitive ability and functioning across all areas. It also effects Student physically, causing reduced muscle tone and skeletal issues. Student has scoliosis, which is minimal and does not restrict Student.³⁸ Student also suffers bouts of ITP³⁹, but has not had an episode for approximately 4 years.⁴⁰
3. Prior to the 2014-15 school year, Student had been residing for an extended period in Paris, France⁴¹, and resided briefly in New Jersey.⁴² In France, Student received instruction in a special needs school for younger children as this was the only English

³² 105 ILCS 5/14-8.02a (g-55).

³³ Her Parents were granted plenary guardianship in the Circuit Court of Cook County, Probate division on February 25, 2016.

³⁴ Student received a certificate of completion in lieu of a diploma. (JT8-8).

³⁵ Mother testimony.

³⁶ Mother testimony.

³⁷ Mother testimony.

³⁸ Mother testimony and JT3-8.

³⁹ Idiopathic thrombocytopenic purpura.

⁴⁰ Mother testimony.

⁴¹ Mother testimony.

⁴² JT3-8.

based experience available.⁴³ No student records, from France or New Jersey, were provided to the District.⁴⁴

PRIOR EVALUATIONS AND DISTRICT ASSESSMENTS AND EVALUATIONS

4. The Parents provided the District with a psychological evaluation completed in February 2014 and a speech /language assessment completed in June 2014.⁴⁵ Student's psychological evaluation shows a reading composite score on the Wechsler Individual Achievement Test-Third Edition ("WIAT-III") of 63 (1st percentile).⁴⁶ Student's speech/language evaluation indicated expressive language scores,⁴⁷ above Student's verbal comprehension.⁴⁸
5. On November 17, 2015 District performed psychological testing (cognitive evaluation).⁴⁹ Student was tested using the Wechsler Adult intelligence Scale -fourth Edition (WAIS-IV)⁵⁰ and the Vineland Adaptive Behavior Scales, Second Edition (Vineland II)⁵¹. The summary of the testing states Student's general cognitive ability is in the extremely low range, verbal comprehension was borderline, general perceptual reasoning abilities are extremely low, and attention was borderline.⁵²
6. On December 22, 2016, the District conducted a domain meeting to determine the need for data collection for Student's reevaluation. Parent consented.⁵³ The team determined there was no need for additional assessments in the areas of academic achievement, functional performance⁵⁴, cognitive functioning⁵⁵, health, vision, hearing, and social/emotional status.⁵⁶ Re-evaluations were needed in the areas of communication status⁵⁷ and motor abilities.⁵⁸ Nothing specific was discussed regarding vocational assessments.⁵⁹
7. The occupational therapy re-evaluation was completed on January 27, 2017. Student was administered the Berry-Buktenica Test of Visual Motor Integration-6th Ed. ("VMI") and supplemental sub tests of motor coordination and visual perception. Student's VMI

⁴³ JT8-8.

⁴⁴ JT3-7.

⁴⁵ JT3-9.

⁴⁶ JT 3-9. Math scores of .4% in numerical operations and .1% in math reasoning and writing/spelling scores of 01%.

⁴⁷ JT3-9 specifies CELF-4 Core Language SS 75, receptive language SS 56, expressive language SS 77, language content index 74 and language memory index 76. Verbal comprehension (WISC-IV SS 67)

⁴⁸ JT3-9.

⁴⁹ JT5-1; JT11-10.

⁵⁰ JT5-5. Student's scores were FSIQ=59; VCI=72; PRI =58; WMI=71. Note: Finding specify, "Due to variability between the two subtests that compose the SMI, caution is recommended interpreting this single score and a closer look at the individual subtests is warranted." No additional information on the subtests was provided.

⁵¹ Mother completed the Vineland II to measure Student's level of adaptive functioning. Student was scored low across all testing. JE5-6.

⁵² JT5-5.

⁵³ JT11-8.

⁵⁴ JE11-9.

⁵⁵ JT11-10.

⁵⁶ JT11-11.

⁵⁷ JT11-10.

⁵⁸ JT11-11.

⁵⁹ School Psychologist testimony.

was un-scorable for her age. Student received a standard score of 55 on the visual perception and 50 for motor coordination.⁶⁰

8. Student's speech language assessment was completed on January 30, 2017. The report notes a consistent frontal lisp was noticed that did not interfere with the ability to be understood by others. Voice, fluency and oral motor and functioning were judged to be within normal limits.⁶¹ The report acknowledges a deficit in Student's pragmatic skills, however, the final recommendation was that Student did not have a communication disorder that adversely affects educational performance. The assessment did not recommend Student for speech/language services.⁶² A vocational evaluation was referred to on a June 2, 2017, IEP transition amendment page.
9. Student was referred to the Department of Human Services Division of Rehabilitative Services ("DRS") for a functional vocation evaluation. The Transition Coordinator was charged with providing this information.⁶³ Mother did not recall receiving this document.⁶⁴ Transition Coordinator testified she did not conduct a formal, or informal, evaluation or a formal observation.⁶⁵ No evidence that this evaluation was ever scheduled or completed was presented. On October 19, 2017, during an IEP meeting, the Transition Coordinator gave Parent information about current DRS⁶⁶ services and supports, this included the contact information for the DRS representative.⁶⁷
10. Student started at TH on August 28, 2017. On September 20, 2017, a Curriculum Transition Assessment was completed by the Mother, there are no directions on the document, and Mother received no directions on how to complete the assessment from the District.⁶⁸ The assessment requires the preparer to rate a student in the areas of education and training,⁶⁹ employment,⁷⁰ independent living skills,⁷¹ and leisure/socialization.⁷² The rating code requires the preparer to rate whether the Student had mastered the skill (M), was progressing in the skill (P), was not able to do the skill (N), or don't know (DK).⁷³ Mother testified she did not recall when she received this assessment, she completed the assessment without any explanation or guidance from the District and did not understand the ramifications of her responses until the November 2017 IEP meeting when the Sped Director explained the assessment created Student's baseline for instruction.⁷⁴ Mother testified that, had she been aware of the importance of

⁶⁰ JT13-2.

⁶¹ JT14-2.

⁶² JT14-3.

⁶³ D2-6.

⁶⁴ Mother testimony.

⁶⁵ Transition Coordinator testimony.

⁶⁶ Division of Rehabilitation Services.

⁶⁷ JT20-7.

⁶⁸ Mother testimony. JT 19-1.

⁶⁹ JT19-1.

⁷⁰ JT19-9.

⁷¹ jt19-11.

⁷² JT19-18.

⁷³ JT19-1. There were no additional directions and no immediate area for feedback. At the end of each section was a small box captioned "Planning for the Future/comments". See JT19-4 as an example.

⁷⁴ Mother testimony and JT22-5.

this form, she would have completed it differently.⁷⁵ The form was subjective, not completed by the Student, and inadequate to assess Student's skill.⁷⁶

11. On an uncertain date, Student was asked to complete the ARC, a self-determination scale. The cover page includes Student's printed name, no date, no school, no teacher name.⁷⁷ The form appears to be completed. The scoring sheet is blank.⁷⁸ Transition Coordinator was uncertain when the form was completed and who provided Student with the form.⁷⁹

NON-DISTRICT ASSESSMENTS AND EVALUATIONS

12. On March 1, 2018, a transitions skills assessment was completed at VR.⁸⁰ The Vocational Counselor who completed the assessment has completed between 200-300 transition assessments, participated in IEP meetings, and has been retained by school districts to do assessment planning.⁸¹ The District did not challenge her credentials. The assessment was based upon a review of school records, two interviews with Student -January 17, 2018 and January 30, 2018- and an interview with Mother.⁸² Vocational Counselor completed the McCarron Assessment of Neuromuscular Development (MAND),⁸³ the Street Survival Skills Questionnaire (SSSQ),⁸⁴ Texas Functional Living Scale (TFLS),⁸⁵ Functional Assessment inventory (FAI),⁸⁶ and the Reading Free vocational Interest inventory, Second Edition (R-FVIIIi-2).⁸⁷ Based on these assessments, the Vocational Counselor concluded Student is not capable of competitive employment and likely does not have the strength and endurance for fulltime employment.⁸⁸

13. Clinical Psychologist 2 completed Student's psychological report based on eight sessions with Student between December 14, 2017 and February 7, 2018. Clinical Psychologist 2 did not testify and the District did not challenge her report. The unchallenged report,⁸⁹ specifies Student's placement at TH has negatively impacted Student due to her feelings of being scared, unsafe, embarrassed, shamed and chastised by teachers,⁹⁰ The report diagnoses Student with an adjustment disorder, with mixed anxiety, and depressed mood. The report contrasts Student's description, by the District, in the February 2017

⁷⁵ Mother testimony.

⁷⁶ Vocational Counselor testimony.

⁷⁷ JT26-1.

⁷⁸ JT26-8. Transition Coordinator testimony.

⁷⁹ Id.

⁸⁰ See Appendix A.

⁸¹ Vocational Counselor testimony.

⁸² Vocational Counselor testimony. Mother testimony.

⁸³ P3-9.

⁸⁴ P3-10.

⁸⁵ P3-11.

⁸⁶ P3-12

⁸⁷ P3-13

⁸⁸ Vocational Counselor testimony. P3-20. The assessment cautions that Student's performance on standardized vocational assessments may not provide good data and that it is important that organized purposeful data be collected while Student is participating in work experiences.⁸⁸ Vocational Counselor recommended additional assessments be completed including a functional capacity evaluation to determine physical tolerances⁸⁸ in addition to obtaining physical tolerances from a physician. (P3-20)

⁸⁹ P44.

⁹⁰ P44-2.

IEP, as being an effective and determined self-advocate and a leader among her peers, to having diminished social skills, and being unable to cope with inappropriate behavior of other students. Student does not feel supported by adults. Student does not experience effective teaching or modeling on how to handle difficult social situations and is no longer a leader.⁹¹ Clinical Psychologist 2 concludes it “is essential for Student’s mental health and for her functioning that her placement at TH be ended and that she resume her education at an institution suited to her needs.”⁹² Mother testified she relied, in part, on discussions with Clinical Psychologist 2 in deciding to unilaterally place Student.⁹³ Sped Director and the February 2018 IEP team considered this report when they determined Student’s placement would be at TH.⁹⁴

14. A psychological assessment, dated April 16, 2018⁹⁵, was completed by Clinical Psychologist.⁹⁶ The District did not challenge her credentials. Student’s initial interview was February 8, 2018. Student was found to be guarded, tentative, and fragile.⁹⁷ The BASC-3 was completed by Student on February 9, 2018. Student scored within the at-risk to clinically significant range in the areas of self-reliance, personal adjustment, attitude to school, attitude to teachers, and school problems.⁹⁸ Clinical Psychologist’s observed TH on February 21, 2018, and found many factors at TH which would impact Student’s learning and emotional wellbeing, including, the continuous movement of staff and students, fast pacing of content, distractions, use of sarcasm and subtle pragmatic communication by staff, and size of program relative to previous placement at ETHS.⁹⁹ The assessment concludes that Student needs a stable environment providing routine and consistency which eliminates distractions and adds supports, small group or one-on-one interactions, social work services, occupational services, speech and language therapy to address both vocabulary/language skills and pragmatic communication skills.¹⁰⁰
15. OA completed a transition assessment profile¹⁰¹ for Student on May 23, 2018. This document is a compilation of Student assessments in the areas of: 1) education,¹⁰² academics,¹⁰³ financial literacy,¹⁰⁴ self-determination and self-advocacy,¹⁰⁵ leadership

⁹¹ P44-3.

⁹² P44-4.

⁹³ Mother testimony.

⁹⁴ Sped Director testimony.

⁹⁵ P4.

⁹⁶ Id. This assessment was based on interviews with the Student, observations at OA, observations at TH (without Student), the BASC-3, completion of a behavior and sensory rating and a review of records. The records included the psychological report of Clinical Psychologist 2 found at P-44.

⁹⁷ Clinical Psychologist testimony.

⁹⁸ P4-(2-3). Clinical Psychologist testimony.

⁹⁹ Clinical Psychologist testimony. P4-(3-4).

¹⁰⁰ Clinical Psychologist testimony. P4-(7-8)

¹⁰¹ P14. Therapeutic Principal testimony.

¹⁰² P14-(1-7).

¹⁰³ P14—8.

¹⁰⁴ P14-(9-10).

¹⁰⁵ P14-(11-13).

skills,¹⁰⁶ employment,¹⁰⁷ community-based,¹⁰⁸ and training.¹⁰⁹ The District did not present any evidence challenging the validity of the assessments.

16. OA completed informal assessments of the Student's performance at several of Student's assigned worksites.¹¹⁰ The results of those assessments concluded Student needed constant supervision on a worksite.¹¹¹

Student IEP's Prior to Private Placement

17. On April 21, 2015, an IEP meeting was held to review/develop Student's 2015-16 IEP¹¹², determine educational placement, consider post-secondary goals and transition services.¹¹³ Student and Mother participated in this meeting.¹¹⁴ Prior educational records were still not received. Student's present levels of functional performance ("PLOP") states: 1) Student is a proficient reader, with excellent comprehension skills of recall and attention to detail; 2) Student speaks well, 3) cognitive deficits impact Student's emotion and academic learning; 4) Student struggles with some tasks of functional movement, such as walking on uneven surfaces, activities that require hand strength and stamina for job training; 5) Student appears to need a consistent and regular schedule for restroom use and when she misses one of her frequent visits, her anxiety and control suffer; 6) Student requires assistance with some tasks of daily living; 7) Student is challenged with functional math skills of coin counting, money use, estimations and data interpretation. Parent's concerns about Student's preparedness for the future were noted.¹¹⁵
18. The April 2015 team reviewed Student's placement, as a freshman, in the Dimensions in Learning Program ("DLP") and found it to be appropriate. Student's was classified a junior, with an anticipated graduation date of Spring 2016.¹¹⁶ At the conclusion of this meeting, the IEP team recommended that Student would continue in the DLP program, with the same accommodations, services and goals as provided in the August 20, 2014 IEP.¹¹⁷ The six goals continued were: How to Skills,¹¹⁸ communication skills,¹¹⁹ reading skills,¹²⁰ functional math skills,¹²¹ writing skills,¹²² and work habit skills.¹²³
19. The secondary transition section of the IEP was completed. The Goal for transition was a general goal that Student may seek supported employment services to support her post-

¹⁰⁶ P14-13.

¹⁰⁷ P14 (14-23).

¹⁰⁸ P14-(23-24).

¹⁰⁹ P14-(25-27),

¹¹⁰ P14-(16-31)

¹¹¹ P14

¹¹² The 2015 IEP was not at issue in this case and was provided for background information.

¹¹³ Mother Testimony. JT3-4

¹¹⁴ JT3-1.

¹¹⁵ Mother Testimony. JT3-10.

¹¹⁶ JT3-7.

¹¹⁷ JT3. The August 2014 IEP was not offered as evidence, by either side, in this case. It was not at issue and is referred to for comparison purposes only.

¹¹⁸ JT3-12

¹¹⁹ JT3-13.

¹²⁰ JT3-14

¹²¹ JT3-16.

¹²² JT3-17.

¹²³ JT3-18.

secondary goals, may seek to continue her education in a post-secondary transition program, may seek to further develop skills and opportunities through enrollment with Community alternatives unlimited.”¹²⁴ Independent living skills of a general nature are also included.¹²⁵ Further, the team discussed transition plans and found that TH program would be appropriate.¹²⁶ The Hearing Officer finds that this language is not a determination of a future placement at TH and merely opens the discussion regarding future transition placement.

20. On April 18, 2016, the IEP team met for Student’s annual IEP review, anticipated date of graduation, and transition planning. Both Mother and Student were present.¹²⁷ Student and Parent confirmed Student’s happiness in the DLP program and reported growth in social and academic areas, including Student’s successful participation in Student’s first gen-ed class, child development. Student expressed an interest taking the second level child development course and remaining in a learning environment. No parental concerns were noted.¹²⁸ Student’s PLOP was generalized and without explanation, some critical levels of functional performance shown in 2015 IEP were dropped. Including, Student’s issues with functional movement, which may affect job skills, and need for frequent use of the restroom.¹²⁹ How Student was affected in the general curriculum included a general statement that significant cognitive disability, can be expected to impact post-secondary goals and outcomes.¹³⁰
21. The April 2016 IEP provided for slight modifications in Student’s goals over the 2015 goals. The goals are similar but show increases in intensity or accuracy.¹³¹ social (5% increase)¹³², reading (a 5% increase), functional math skills (a 10% increase)¹³³ and vocational skills. Student’s progress reports for the 2015 IEP goals are unclear and generally state “making adequate progress”.¹³⁴ Student’s writing goal in the April, 2015 IEP was not addressed in the April 2016 IEP, however, Student’s progress reports indicate that all components of the writing goal were met prior to the IEP meeting.¹³⁵ The speech language pathologist reported that Student has met the current goals for speech and language, the goal was shifted to a maintenance goal.¹³⁶ The IEP team accepted the recommendation.¹³⁷ At the conclusion of this meeting, the IEP team recommended that Student would continue in the DLP program, will have access to academic accommodations, related services of social work, and occupational therapy, and extended school year (“ESY”).¹³⁸

¹²⁴ JT3-5.

¹²⁵ JT3-25.

¹²⁶ JT3-7.

¹²⁷ Mother testimony, JT8-1.

¹²⁸ JT8-8. Mother testimony.

¹²⁹ JT 3-10 and JT8-10.

¹³⁰ JT8-10

¹³¹ JT-8

¹³² JT3-12 and JT8-12.

¹³³ JT8-16.

¹³⁴ JT6 There are exceptions in the progress reports but they are insufficient to assist Parents with following Student’s progress toward an individual goal.

¹³⁵ JT7-10.

¹³⁶ JT8-11.

¹³⁷ JT8.

¹³⁸ JT8-27.

22. The Transition Coordinator discussed transition options and reviewed components of TH and the NSSED¹³⁹ program. Student self-reported that she would like more time in the high school building.¹⁴⁰ The team was concerned about Student splitting her time between a transition placement and the high school, as this can leave a student feeling disconnected from both programs.¹⁴¹ The team agreed Student would continue to receive education in the DLP program.¹⁴² There was no change to the Secondary Transition goals.¹⁴³

23. Mother and Student were both present for the IEP meeting on February 9, 2017.¹⁴⁴ The Student's evaluations were reviewed.¹⁴⁵ The PLOP in this IEP,¹⁴⁶ with the exceptions of speech/language and occupational therapy, remains the same as the April 18, 2016 IEP¹⁴⁷. The math goal calls for completion by February 2017.¹⁴⁸ Per speech/language evaluation and recommendation, Speech/language services were discontinued.¹⁴⁹ Occupational therapy ("OT") reported that Students goals are coordinated and shared with the curricular areas of vocational training, computer skills, academics and implemented by classroom staff and the occupational therapist. It was recommended that Student have a goal for shoe tying and managing fasteners (i.e. hook and eye).¹⁵⁰ Vocational report indicates Student has increased her work skills over the year in the area of punctuality, recognizing and avoiding mistakes, consistent job performance and working with minimal supervision.¹⁵¹ Student has experienced success working in the library and mail room, Success working in food service was limited due to limited hand strength and motor planning.¹⁵² The team discussed C preschool and work programs at TH.¹⁵³ Mother was not told about preschool placement options facilitated through TH.¹⁵⁴ There was virtually no change in Transition Services from the 2016 IEP.¹⁵⁵

24. School Psychologist was at both the December 2016 domain meeting and February 2017 IEP meeting.¹⁵⁶ He did not recall raising any concerns regarding the most recent evaluations or Student's IEP goals. He did not recall why a five percent accuracy increase on a goal would be meaningful for Student. He did not recall why any goal was continued without modification or discontinued. There was no change to the Secondary

¹³⁹ North Suburban Special Education District.

¹⁴⁰ JT8-8.

¹⁴¹ JT8-8.

¹⁴² JT8-8.

¹⁴³ FOF 19. JT3-25 and JT8-26.

¹⁴⁴ JT15-1.

¹⁴⁵ Testimony of School Psychologist. See FOF 7 and 8.

¹⁴⁶ JT15-9.

¹⁴⁷ JT8-10.

¹⁴⁸ JT15-13.

¹⁴⁹ School Psychologist Testimony and JT15-29, which found that Student's speech/language did not impact her ability to access education.

¹⁵⁰ JT15-10.

¹⁵¹ JT15-11.

¹⁵² JT15-10.

¹⁵³ Mother testimony.

¹⁵⁴ Transition coordinator testimony.

¹⁵⁵ JT 3-(26-27),JT8-(28-29)and JT15-(24-25).

¹⁵⁶ School Psychologist testimony.

Transition goals which remained exactly the same in the 2015, 2016 and 2017 IEP.¹⁵⁷ He did not recall Parents having concerns. Mother requested that the District investigate the possibility of Student working at C preschool as a vocational work experience. Mother credibly testified that she raised concerns about transition services and requested that the goals be modified because of Student's anticipated move to transition services.¹⁵⁸

25. During May 2017, Mother contacted Transition Coordinator to modify the IEP goals to reflect Student attending TH. Transition Coordinator agreed that the goals needed to be modified and, if Parents agreed to the new goal, no IEP meeting would be necessary.¹⁵⁹ Transition coordinator testified that the goals were modified through a notification of IEP amendment dated June 1, 2017, which states on its face, that it is a modification for the secondary transition and transition services to incorporate parent/student input.¹⁶⁰ The goal listed under secondary transition specifies: "in summers between her junior and senior years and senior year and the transition house Student worked as a volunteer at C preschool."¹⁶¹ Parent credibly denies receiving this document.¹⁶²
26. By email, on September 7, 2018, Mother requests the Student's IEP goals be updated. An email response from one of Student's teachers confirms that the goals were not updated.¹⁶³ Mother requests an IEP meeting to update Student's goals and discuss Student's upcoming knee surgery.¹⁶⁴
27. On October 19, 2018 an IEP meeting was convened, Student and Parents were present.¹⁶⁵ Parents' shared numerous concerns about Student at TH, including, failure to plan for Student's return from surgery, exclusion from peers, safety, 1:1 assistance and accommodations required by Student's surgery.¹⁶⁶ The team proposed 5 goals for Student, which were not accepted by the Parents. The Mother was provided with a contact person at DRS (the public service agency).¹⁶⁷ The IEP team continued the meeting to November 9, 2017 to allow the District to retool the Student's proposed goals.¹⁶⁸
28. At the November 9, 2017 IEP meeting, the Parents and their attorney¹⁶⁹ were present, Student did not attend. District's Counsel was also present.¹⁷⁰ The team reported that Student is only present at TH for two hours each morning due to her toileting needs.¹⁷¹ The Student's medical requirements, (including toileting, safety, and transportation) to return full time to TH were discussed. Parents were assured that one to two staff would be dedicated to Student's bathroom needs and Parents agreed.¹⁷² The team agreed to

¹⁵⁷ FOF 19, JT3-25, JT8-26 and JT 15-23.

¹⁵⁸ Mother testimony.

¹⁵⁹ Mother and Transition Coordinator testimony. D-2.

¹⁶⁰ Mother testimony (mother denied receiving this document), Transition Coordinator Testimony and D2-1.

¹⁶¹ D2-3.

¹⁶² Mother testimony.

¹⁶³ P23-6.

¹⁶⁴ Mother testimony P23-(2-3).

¹⁶⁵ JT20-4

¹⁶⁶ JT20-6.

¹⁶⁷ See FOF 9.

¹⁶⁸ Sped Director and Mother Testimony. P-31.

¹⁶⁹ Mother testified that Parents changed attorneys following this meeting.

¹⁷⁰ JT22-2

¹⁷¹ Mother testimony

¹⁷² JT22-4.

revise the math and transportation goals.¹⁷³ Student's transportation goal requires her to safely navigate the community utilizing public transportation with 80% accuracy.¹⁷⁴ Parents were provided with a copy of the curriculum for TH.¹⁷⁵ The placement specifies that out of 1680 bell minutes all minutes are outside of the general education setting.¹⁷⁶

29. A DRS representative was present at the November IEP meeting.¹⁷⁷ The Secondary Transition goal was modified to: "Upon completion of her transition program, Student plans to attain competitive integrated employment in the field of early childhood education, and may pursue training programs in an area of interest, which at this point is early child hood education." No modification was made to independent living outcomes/goals.¹⁷⁸ Vocational Counselor specifies that this goal is written with no or inadequate employment assessments, no data collection, no data driven transition program and is not realistic.¹⁷⁹

Physical immobilization

30. During the Spring of 2017, Student had knee surgery which required the District to provide a one-to one assistant and other accommodations. Transition Coordinator was aware of the surgery and the accommodations. Transition Coordinator was advised Student would need a second knee surgery in the fall of 2017. There was no discussion about Student's future needs at TH.¹⁸⁰

31. By email on September 7, 2017, Mother requests to discuss upcoming Student surgery.¹⁸¹

32. Student had knee surgery on September 22, 2018.¹⁸² On October 5, Parent notified Student's case manager that Student was ready to return to school but needed assistance, there was no response and on October 9, 2018, Mother emailed Transition Coordinator requesting the same accommodations provided at ETHS.¹⁸³ The Transition Coordinator spoke to Mother who was concerned about Student's safety at TH following surgery, and Student's need for assistance using the toilet.¹⁸⁴ To assuage concerns, Transition Coordinator suggested Student arrive late and eat in the conference room to avoid crowded times at TH.¹⁸⁵ Transition Coordinator wanted all female staff trained¹⁸⁶ with assisting Student on the toilet.¹⁸⁷ Due to Student sensitivity and prior experience at ETHS, Mother and Student wanted one person in this capacity.¹⁸⁸ Transition

¹⁷³ JT22-5.

¹⁷⁴ JT22-16.

¹⁷⁵ JT22-5.

¹⁷⁶ JT22-21.

¹⁷⁷ JT22-2. This is the first time a DRS representative appears at Student's IEP meeting.

¹⁷⁸ JT22-26.

¹⁷⁹ Vocational Counselor testimony and P-4.

¹⁸⁰ Transition coordinator and Mother testimony.

¹⁸¹ FOF 26.

¹⁸² Mother testimony and P25-1.

¹⁸³ Mother Testimony that Student needed a 1-1 aide like she had in Spring of 2017. P28.

¹⁸⁴ Mother and transition coordinator testimony. P27.

¹⁸⁵ Transition Coordinator Testimony and P28.

¹⁸⁶ Mother testified this was six people.

¹⁸⁷ Transition Coordinator Testimony.

¹⁸⁸ Mother Testimony.

Coordinator determined this was not realistic given the fluidity of the Staff moving through TH and scheduling.¹⁸⁹ Assistant Director testified there is no one staff person who was present at TH the entire school day.¹⁹⁰ Mother was concerned that Student could not participate in YMCA group as this was the only social time Student had with peers.

33. Student returned to TH on October 16, 2017, but was only able to participate for two hours, per day, in the morning. After two hours Mother would pick Student up and take Student home to use the toilet.¹⁹¹
34. On November 10, 2017, following the November 9, 2018 IEP meeting, Student returned to TH full-time.¹⁹²

Student Experience at TH

35. During the summer of 2017, Student worked as a Counselor at C preschool, she did not participate in ESY. Student was looking forward to a vocational experience at C preschool in the fall.¹⁹³ Although Mother requested placement at the February 2017 IEP meeting¹⁹⁴, and reminded the Transition Coordinator through an email in June 2017,¹⁹⁵ the District took no action on the proposed placement. Student entered TH disappointed because the vocational experience had not been arranged. Mother testified she scheduled Student's surgery for September because the preferred vocational placement had not been arranged by the District. This failure caused Student anxiety throughout the fall 2017 school year.¹⁹⁶ Transition coordinator credibly testified that she took no action because she knew Student was having knee surgery.¹⁹⁷
36. Mother reported Student's first emotional breakdown on September 7, 2017, which was caused by Student becoming fatigued while out in the community.¹⁹⁸ Mother testified to numerous other incidents, Student being upset at District staff failure to discipline unruly students, Student being isolated during cooking class, Student being excluded from YMCA participation, Student being laughed at by teacher for inappropriate clothing choices during a living skills class, people at TH not talking nicely, Student having anxiety at not knowing the TH schedule and the size of the student population causing chaos.¹⁹⁹ Mother also reported Student's threat to run away from TH if she if forced to attend.²⁰⁰

¹⁸⁹ Transition Coordinator Testimony.

¹⁹⁰ See FOF 44 for additional information on staffing.

¹⁹¹ Mother Testimony.

¹⁹² Mother Testimony. This followed the November 9, 2017 IEP meeting and agreement on additional IEP supports.

¹⁹³ Mother Testimony.

¹⁹⁴ Mother and transition coordinator testimony. Transition coordinator admitted she was advised by case manager of the proposed placement in March 2017.

¹⁹⁵ Sped Director and Transition Coordinator and Mother Testimony and P-20.

¹⁹⁶ Mother testimony.

¹⁹⁷ Transition Coordinator Testimony.

¹⁹⁸ Mother testimony and P23.

¹⁹⁹ Mother testimony. P-50.

²⁰⁰ Mother testimony and P38.

37. On December 12, 2017, Student begins therapy with Clinical Psychologist 2. This report explains Student states she is never happy at TH and always feeling sad and anxious.²⁰¹ District presented testimony that while participating at TH Student appeared to be happy and did not appear to be unduly anxious and upset.²⁰²
38. The District facilitated Student's work experience at C preschool to begin on January 8, 2018, five days per week in the morning. Although, transportation had been arranged by the district, Student was not picked up by the District bus on January 8, 2018, causing Student additional anxiety. No interruption of service occurred after the first day.²⁰³

Unilateral Placement and Least Restrictive Environment

39. District was notified, by email, on January 30, 2018, of Parents' intent to unilaterally place Student at OA effective February 13, 2018.²⁰⁴ OA is an Illinois State Board of Education approved placement.²⁰⁵ On February 14, 2018 an IEP meeting occurred at the District. At this IEP meeting, Student and both Parents were present. Student read a statement she had prepared explaining the problems she was having at TH.²⁰⁶ The Parents' provided a letter from Clinical Psychologist 2 stating Student had a new diagnosis of adjustment disorder, with mixed anxiety and depressed mood.²⁰⁷ The District did not request to complete a psychological assessment of the Student and did not request additional records from Clinical Psychologist 2.²⁰⁸ The IEP team determined that the November, 2017 IEP would remain in place, no additional services were offered. Sped Director suggested if Student had done something differently Student might have had a better experience.²⁰⁹
40. Following the District's February 2018 IEP meeting, the District proposed that Student could participate in academics at ETHS and TH at the same time, moving between the two programs. This was rejected by the Parents. In March 2018, there was a follow-up meeting with the Mother. The Assistant Director was present. The District proposed an alternative program of special education general education or co-taught classes in addition to transition services.²¹⁰ This too was rejected by the Mother.²¹¹
41. On May 23, 2018, OA held an IEP meeting. At that meeting Student's PLOP was determined and OA drafted nine goals, including an academic goal in reading.²¹² There was no transportation goal, there was a pedestrian safety in the community goal.²¹³ One of the goals is a self-awareness and self-advocacy goal to assist Student in managing her

²⁰¹ P44-2.

²⁰² Sped director Testimony and Transition Coordinator Testimony.

²⁰³ Mother and Transition Coordinator testimony.

²⁰⁴ Mother testimony. P41-(2-3). JT25-7. 20 U.S.C. §1412(a)(10)(C)(iii)(I) requires Parents seeking reimbursement to provide 10 business days' notice to the district prior to the removal of the child from the public school. That requirement was met.

²⁰⁵ Therapeutic Principal testimony.

²⁰⁶ Mother testimony. JT25-4. P40.

²⁰⁷ Mother testimony. P44-3.

²⁰⁸ Sped director testimony.

²⁰⁹ Mother testimony.

²¹⁰ Mother testimony

²¹¹ Mother testimony.

²¹² Therapeutic principal testimony and P15-9.

²¹³ Therapeutic Principal testimony and P15-17.

emotions when she feels stressed.²¹⁴ Three of the goals are the same or similar to the District's February 2018 IEP goals.²¹⁵

42. Sped Director testified that there were no typically developing peers in the TH program, however, at TH Student participates in Dance and Special Olympics at ETHS.²¹⁶ There was also testimony that Student participates in planned outings through TH to the ETHS edible garden, YMCA and other community based activities.²¹⁷

43. Both the Sped Director and the Transition Coordinator felt that TH was Student's appropriate placement and could meet all Student's transition needs. The Transition Coordinator, never having been to OA, opined going forward TH would be able to provide all the transition services provided in OA's IEP²¹⁸ and that Student did not need a more restrictive placement in a therapeutic school, this opinion was based on her belief that typically students in a therapeutic school need more support.²¹⁹ Further, she reiterated that TH has a functional not an educational curriculum and that she did not see academics as a priority for Student.²²⁰

Programs

44. The TH program is a self-contained program located in a residential home in the community approximately two blocks from the ETHS campus.²²¹ There were thirty-two (32) students assigned to TH at the start of the 2017-18 school year.²²² All students had previously been part of the special education program at ETHS.²²³ Staff consists of two part-time teachers,²²⁴ one social worker (3.5 days per week), and five job coaches.²²⁵ A speech language pathologist and psychologists are present part time. All students are present at the start of the day and many students at lunch. Students are given memberships to the local YMCA to facilitate exposure to the community, exercise, and social/peer relationship development. All transportation during program hours is by public transit. Job coordinators accompany students to the worksite.²²⁶

45. OA program is in a small ranch house. OA has ten staff members (two teachers, clinical social worker, program director, vocational coordinator, four instructional aides/job coaches). OA contracts out for occupational and speech therapists as needed, and receives assistance from O village for transition to adult services. No more than 15 students are admitted to the program, most students are disabled placements, there are students with average intelligence. There was a one-to-one staff to student ratio for Spring 2018. In addition to transitional programs students are offered educational

²¹⁴ Social Worker testimony and P 15-20.

²¹⁵ Transition Coordinator and P15 and JE-25.

²¹⁶ Sped Director testimony. It is noted that the Parent issue regarding Dance team was withdrawn prior to the hearing because Student no longer participates.

²¹⁷ Transition Coordinator and Mother testimony.

²¹⁸ P15-6.

²¹⁹ Transition Coordinator testimony.

²²⁰ Transition Coordinator.

²²¹ Photographs of the location are found at D15-(1-15).

²²² Transition Coordinator testimony. The Sped director testified only 18-22 students.

²²³ Transition coordinator testimony and Sped director testimony

²²⁴ Transition coordinator testimony. Assistant Director testified teachers are assigned based on contractual obligations, one for Am, one for PM, with slight overlap at lunch. Assistant director testimony.

²²⁵ Job coaches are not certified teachers. Transition coordinator testimony and JT22-4.

²²⁶ Transition coordinator testimony.

programs in reading and math.²²⁷ The Students participate in daily life skills, including shopping in the community. Student has an IEP goal of safely navigating parking lots.²²⁸ All transportation services are privately provided. OA could provide and implement a goal for public transportation or community knowledge specifically geared toward Evanston.²²⁹

Parent Expenditures.

46. Parent expenditures resulting from the unilateral placement were: 1) Transportation costs -\$788.72;²³⁰ 2) OA costs: \$13,578.30;²³¹ 3) Clinical Psychologist 2: \$2,940.00²³² Clinical Psychologist; \$1900²³³ VR (Transition assessment) -\$2,200.00;²³⁴ Hansen & Cleary Inc. (prior attorney) \$5,500.²³⁵

CONCLUSIONS OF LAW AND

DISCUSSION OF THE ISSUES (taken out of sequence)

Issue Two: Whether the District denied Student a FAPE by failing to provide Student with useful present levels of performance, appropriate measurable goals and services in the areas of math, reading, vocational skills, speech/language, occupational therapy, and social work from April 18, 2016 to the date of hearing.

A review of all the evidence produced at hearing in this matter supports Parents' allegations that the District denied Student a FAPE. The evidence shows that, for the period in question (April 2016- current), the District consistently failed to develop an IEP designed to enable Student to make educational progress by failing to provide measurable annual goals and appropriate related services designed to address the Student's unique educational needs in the areas of academic instruction (reading, writing, math), vocational skills, occupational therapy and social work.

²²⁷ Therapeutic principal testimony.

²²⁸ Therapeutic principal testimony and P15-17.

²²⁹ Social Worker and Therapeutic Principal testimony.

²³⁰ Mother testimony and P51.

²³¹ Mother testimony and P52-(1-3).

²³² Mother testimony and P53-(1-5) (a portion of this bill appears to be covered by insurance, it also there may be in plan reductions P53-8).

²³³ P53-6.

²³⁴ P53-7.

²³⁵ P53-8.

The Individuals with Disabilities Education Act (“IDEA”) “requires States receiving federal funds to make a free appropriate public education (“FAPE”) available to all children with disabilities residing in the State. *Forest Grove School District v. T.A.*, 557 U.S. 317, 230, 129 S.Ct. 2484, 2492 174 L. Ed.2d. 168 (2009) In order for a school district to meet its FAPE obligation under the IDEA, it must “offer an independent educational plan reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). “The goals may differ, but every child should have the chance to meet challenging objectives.” *Id.*

The IEP is developed by an “IEP team” comprised of the disabled child’s parents, teachers from the child’s school, as well as special education teachers and providers. 20 U.S.C. §1414(d)(B). The IEP team is required to review the child’s “IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child had been achieved,” and revise the IEP if needed. 20 U.S.C. § 1414(4)(A)(i - ii). A district must ensure that each child with a disability within its jurisdiction has an IEP in effect for that child at the beginning of each school year. Section 1414(d)(2)(A).

The IDEA imposes both procedural and substantive obligations on the State to insure compliance with IDEA requirements. *Board of Education v. Rowley*, 458 U.S. 176, 207-208 (1982). *Endrew* expanded on *Rowley*, directly addressing the substantive requirement of IDEA. *Endrew F.*, 137 S. Ct. at 995. To comply with the IDEA’s procedural component, a school district must follow all the “guaranteed procedural safeguards” set forth in the Act. 20 U.S.C. §1415(a); *See Bd. of Educ. v. Ross*, 486 F.3d 267, 273-74 (7th Cir. 2007). One of the IDEA ‘s procedural requirements is that a school district must assess each disabled child identified by the district for their educational needs, develop an IEP according to that assessment, and review and revise the plan

pursuant to the requirements of the Act. 20 U.S.C. §§ 401(14) & 1414(a-d); *Ross, Id.* “The IEP is the means by which special education and related services are ‘tailored to the unique needs’ a particular child.” *Endrew F.*, 137 S. Ct. at 994 (quoting *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)). The IEP must include a statement of the child’s present level of academic achievement and functional performance, measurable annual academic and functional goals that will meet the child’s needs and allow the child to make progress in the general educational curriculum, a description of how the child’s progress toward meeting the annual goal will be measured, and a statement of the special education and related services that are to be provided to the child. 20 U.S.C. Secs. 1414(d)(1)(A)(i)(I),(II) &(IV), 34 CFR §300.320 (a)(2)(i)(A). Special education is specially designed instruction to meet a student’s unique needs (34 CFR 300.39(a)(1)) and special education instruction must be based on peer-reviewed research, to the extent practicable. 20 U.S.C. § 1414(d)(1)(A)(i)(V). Finally, the IEP must identify any program modifications that will be provided to allow the student to advance appropriately toward meeting his or her annual goals, including making progress in the general education curriculum. 34 CFR 300.320(a)(4)(i) – (iii). A district must ensure that each child with a disability within its jurisdiction has an IEP in effect for that child at the beginning of each school year. Section 1414(d)(2)(A). Defects in an IEP that “result in the loss of educational opportunity” deny a child a FAPE. *Ross*, 486 F.3d at 276.

In Student’s February 2015 IEP, the District took steps to provide Student with clearly stated present levels of performance, specifying Student’s current abilities, skills,

weaknesses and strengths.²³⁶ The 2015 goals were carried forward from the August 2014 IEP.²³⁷ Neither the 2014 or 2015 IEPs are at issue in this case.

In the April 2016 IEP, the District again continues Student's same IEP goals from the previous IEP. In doing so, the District fails to clearly address Student's progress toward the goals, but randomly and quite inexplicably increases the accuracy standards for the goal by five percent, how this increase is meaningful for Student is never explained.²³⁸ There was no testimony presented as to why a five percent increase in a goal would be meaningful for Student. District Psychologist could not explain why this increase would be meaningful.²³⁹

The District argues that having similar goals to a previous year in an IEP is not a FAPE violation, instead it is an acknowledgement that the student is making progress toward the goal but has not yet mastered the goal, and in support the District cites *E.G. v. Great Valley Sch. Dist.*, 117 LRP 20828 at 5-6 (D. Penn 2017). The court's decision in this case, however, was based on a finding from the record that supports a conclusion that [E.G] made meaningful real-world progress relative to the severity of [E.G's] disability. *Id* at 5. That is not the record in this case, where the only evidence offered of Student progress is contained in the District's progress reports, which are not clear, not specific, and for many goals only state "making adequate progress".²⁴⁰

Again, in February 2017, with the exceptions of speech/language and occupational therapy, the District proceeds to copy and paste goals from the previous IEP, even

²³⁶ FOF 17.

²³⁷ FOF 18.

²³⁸ FOF 21.

²³⁹ FOF 24.

²⁴⁰ FOF 21.

including a math goal from the 2016 IEP, which was to be completed by February 2017.²⁴¹ Whether this was an oversight cannot be determined because the IEP is unclear as to whether Student was making any progress toward this goal. The Student's goal for occupational therapy was updated²⁴² and the Student's speech/language goal was discontinued, the District's finding in the IEP was that Student no longer needed speech/language therapy to access education.²⁴³ Insufficient evidence was presented by Parents to refute this decision. The District's witnesses admitted that no transition goals were drafted during the February 2017 IEP meeting and no transition goals were in place on the day Student started at TH.²⁴⁴

Failure to have an IEP with appropriate transition goals in place on the day Student started at TH resulted in a loss of educational opportunity for Student. Rather than being educated under an updated transition plan tailored to Student's unique needs, Student entered TH with essentially the same goals and objectives that were in place when she entered ETHS three years earlier.²⁴⁵

Clearly, the evidence shows the from April 18, 2016 to November 9, 2017, the District failed to provide Student present levels of performance which reflected her strengths and weaknesses upon which to base goals which were designed to meet Student's unique needs, and this failure denied Student the opportunity to make progress toward the goals and educational benefit in the disciplines of reading, math, vocational skills, writing, occupational therapy and social work. This failure denied Student a FAPE.

²⁴¹ FOF 22.

²⁴² FOF 7.

²⁴³ FOF 8.

²⁴⁴ FOF 17, 20, 23

²⁴⁵ Compare FOF 17 with FOF 23 (2017 IEP)

Issue Three: Whether the District, from October 9, 2017 to November 9, 2017, failed to provide Student with related services and accommodations to address Student's needs resulting from a temporary physical disability and, if so, did this failure result in a denial of FAPE to the Student.²⁴⁶

Parents next allege that the District failed to provide Student with necessary services and accommodations at TH following Student's knee surgery and that the District's failure denied a Student FAPE. The evidence at hearing, however, shows that the District proposed sufficient accommodations to allow Student to access the TH program during the period that Student was recovering from knee surgery. Therefore, in this instance there was no denial of FAPE.

“A free appropriate public education is one ‘specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.’” *Murphysboro Community Unit Sch. Dist. No. 186 v. Illinois State Bd. of Educ.*, 41 F.3d 1162, 1166 (7th Cir. 1994) (quoting *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct 3034, 73 L.Ed.2d 690 (1982)). When a student with a disability suffers a temporary physical disability that may impact the student’s ability to access his or her special education services, the district should put in place reasonable accommodations to allow the student full access to his or her educational services or programs. *See e.g., Lincoln-Sudbury Regional Sch. Dist. v. W.*, 2018 WL 563147, pgs. 12-13 (D. Mass. 2018). If the district proposes reasonable accommodations that would allow student to access the special education services and

²⁴⁶ Parents’ DPC requested a finding that this issue was a violation of Student’s rights under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act. The IHO has no authority over the alleged violations claimed under these laws. Parents are free to pursue these claims in the appropriate forum.

programs during the period the of student's physical disability, there can be no finding of FAPE. *See e.g., C.N. v. Los Angeles Unified School District*, 2008 WL 4552951, pgs. 8-9 (C.D. Cal. 2008) (no denial of FAPE where the district provided a reasonable alternative method to student's preferred method of administering g-tube feeding); *Poplar Bluff School Dist. V. Missouri State Educ. Agency*, 106 LRP 55876, pg. 42 (September 18, 2006) ("the fact that Petitioner was not allowed to choose specific teachers to implement the IEP does not deny a FAPE.") *affirmed Taylor P. v. Missouri Dept. of Educ.*, 48 IDELR 185 (W.D. Mo. 2007).

Parents argue here that the District's refusal to provide the accommodation they requested to assist Student when she returned to TH following her knee surgery – that being a specific, dedicated staff member to assist Student when she used the bathroom facilities at TH – prevented her from accessing her special education services and therefore denied her a FAPE. The Parents' argument lacks merit. The evidence at hearing shows that the District offered a reasonable alternative accommodation for assisting Student and therefore there was no denial of FAPE. Student started attending TH in August 2017. Student had knee surgery on September 22, 2017 and recuperated for approximate two weeks thereafter.²⁴⁷ On October 9, 2017, Parent e-mailed Student's Transition Coordinator, stating that that Student was ready to return to TH, and further stating that Student would need assistance using the toilet at TH due to her knee surgery.²⁴⁸ Parent subsequently requested that, due to Student's sensitivity, TH should assign one specific person to assist Student's toileting needs, an accommodation that was previously provided to Student at ETHS after Student's other knee surgery in the

²⁴⁷ FOF 30, 31.

²⁴⁸ FOF 32.

Spring of 2017.²⁴⁹ The Transition Coordinator responded that, due to the fluidity of staffing and scheduling at TH, it would not be possible to dedicate one specific person to assist Student. Instead, the District trained all TH female staff to assist Student so there would be someone present all times to lend assistance.²⁵⁰ Both Student and Parent initially rejected this accommodation, suggesting that without dedicated one-to-one toileting assistance, Student would not be able to fully participate in TH activities.²⁵¹ Student subsequently returned to TH on October 16, 2017 but only participated for two hours each morning. Parent would then pick up Student and take her home to use the bathroom.

The choice to attend only two hours each morning was a voluntary choice based on Student's preferences. The District's proposal, to have trained staff available to lend assistance to Student whenever she needed it, was clearly a reasonable alternative to the Parents' requested one-to-one aide. Therefore, this alternative was a reasonable accommodation to address Parent's concern and would have allowed Student to attend TH full time and access TH's special educational services and programs. The District did not deny Student a FAPE.

Issue Five: Whether the District denied Student a FAPE by failing to conduct appropriate transition assessments or provide Student with a transition plan tailored to Student's individual needs and interests.

On August 28, 2017, Student's first day at TH, Student entered the program with an IEP from February 2017 in place, which provided no transition assessments and no

²⁴⁹ IFOF32.

²⁵⁰ FOF 32

²⁵¹ FOF 32

transition goals. The District, therefore, failed have a transition-appropriate IEP in effect for this Student at the beginning of the 2017 school year, which resulted in a loss of educational opportunity to Student and a denial of FAPE.

The IDEA requires that IEPs for disabled students 16 years of age or older must include a transition plan comprised of a coordinated set of transition services designed to move special education students successfully from school to post-school settings. 34 CFR 300.1 and 300.43. Illinois law reduces the student's age requirement to 14 1/2 years for transition services. 23 Ill.Admin Code §225.230(c). The transition plan must include appropriate, measurable postsecondary goals based on age- appropriate transition assessments related to training, education, employment, and when appropriate, independent living skills, and the plan must assist the student in reaching those goals. 34 CFR 300.320. The transition services should be activities that are:

1. designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
2. Based on the individual child strengths, preferences, and interests, and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of functional vocational evaluation.

34 CFR § 300.43(a). *See Also Kevin T. v. Elmhurst Comm. School Dist. No. 205*, 46 IDELR 153, pg. 11 (N.D. Ill. 2002).

The district must invite a child with a disability to attend the child's IEP team meeting if a purpose of the meeting will be the consideration of the post-secondary goals for the child and the transition services needed to assist the child in reaching the goal. 34 CFR §300.321(b)(1). If the child does not attend the IEP team meeting, the district must take other steps to insure that the child's preferences and interests are considered. 34 CFR §300.321(b)(2). Failure to perform transition assessments and to base the postsecondary goals on the assessments is a denial of FAPE. *Gibson v. Forest Hills Local School Dist.*, 68 IDELR 33, pgs. 13-14 (6th Cir. 2016); *Jefferson County Bd. Of Educ. v. Lolita*, 64 IDELR 32, pgs. 23-24 (11 Cir. 2014); *S.G.W. v. Eugene School Dist.*, 69 IDELR 181, pg. 7 (D. Oregon 2017) (relying on only student interview as an assessment tool is insufficient).

There were three IEP meetings prior to Student's starting at TH.²⁵² The February 2015 IEP included general transition goals which could be applied to virtually any student.²⁵³ As early as February 2015, the IEP team classified Student as a "junior".²⁵⁴ The team anticipated Student needing post-secondary transition services as early as June 2016²⁵⁵ and should have begun transition planning to help Student plan for her future. However, the District took no action.

At the April 2016 meeting, the IEP team discussed transition services, Student's desire for additional academics, and discussed Student splitting time between the ETHS and TH programs, which the team rejected. The team recommended Student's placement at ETHS for one final year.²⁵⁶ However, even though, at this point, Student's

²⁵² FOF 17,20, 23.

²⁵³ FOF19.

²⁵⁴ FOF 18.

²⁵⁵ FOF 18.

²⁵⁶ FOF 21and 22.

need for postsecondary goals should have been clear to the team, Student's transition plan was not modified and no transition assessments were requested.²⁵⁷

At the domain meeting on December 22, 2016, eight months before Student entered TH, the team did not request transition assessments. Parent was present and did not voice objection. Parent, however, is not an educator, and had no reason to anticipate the impending need for transition assessments to form the basis for postsecondary goals. The District neglected to request the transition assessments. The District cannot abrogate its obligation to provide these assessments to Parents' failure to object at a domain meeting.

Even at the February 2017 IEP meeting, during Student's final semester at ETHS, with Student's move to transition services looming on the horizon, the District took no action to include in the IEP transition goals based on Students strengths, preferences and interests. The day Student entered TH in August 2017, the transition services and goals section of the IEP was virtually the same as in February 2015.²⁵⁸

Mother requested Student's goals be updated to include transition goals in February 2017,²⁵⁹ May 2017²⁶⁰, September 2017²⁶¹, and October 2017²⁶². However, despite Mother's repeated requests, the District did not provide any transition goals until November 9, 2017.²⁶³

The District attempts to argue that on June 1, 2017, following Mother's May request for transition goals, there was a "preapproved" goal change to include a

²⁵⁷ FOF 22.

²⁵⁸ FOF 24.

²⁵⁹ FOF24.

²⁶⁰ FOF25.

²⁶¹ FOF26.

²⁶² FOF 27.

²⁶³ FOF 29.

transition goal.²⁶⁴ Mother admitted that updating the goal, though without a formal IEP meeting, was approved by her during discussions with the Transition Coordinator.²⁶⁵ However, the modification offered into evidence by the District, which the Mother denies receiving, includes facts which were not known to the District on the date of the alleged amendment.²⁶⁶ Further, in September 2017, when responding to Mother's request to amend the goals, a District representative admitted the IEP goals were never changed.²⁶⁷ The alleged amended IEP refers Student for a vocational evaluation to a governmental agency.²⁶⁸ The government agency contact person was not provided to Parents until Student's October 19, 2017 IEP meeting.²⁶⁹ Although the June document may well have been drafted, it appears that it was never provided to Parents, and was not entered into Student's educational records. Intention is not action.

Not only did the District fail to provide any transition goals for the Student, it also failed to conduct any transition assessments to use as a basis to draft transition goals.

IDEA requires the assessments be provided in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer. 34 CFR 300.304(c)(1)(ii), (c)(3). The assessments must be administered by trained and knowledgeable personnel; used for the purposes for which the assessments are valid; and administered in accordance with any instructions provided by the

²⁶⁴ FOF 25.

²⁶⁵ FOF 25.

²⁶⁶ FOF25. District could not know how Student spent the summer as it had not yet happened.

²⁶⁷ FOF 26.

²⁶⁸ FOF 9.

²⁶⁹ FOF27.

producer of the assessments. 34 CFR 300.304(c)(1)(iii-v). Implementation of a transition plan where staff responsibilities are designated is the responsibility of the district; it is not the parent's responsibility to prod the district's staff into action and to ensure implementation. *Gallop-McKinley County Schools*, 108 LRP 21191 (SEA N.M. 06/25/07). Flaws in a transition plan and transition goals are procedural violations under the IDEA. *See Bd. of Educ. v. Ross*, 486 F.3d at 276. Failure to properly implement a transition plan which results in a loss of educational opportunities to the disabled student is a denial of FAPE. *Kevin T.*, 46 IDELR 153, at pg. 12; *Joaquin v. Friendship Charter School*, 66 IDELR 64, pg. 7 (D.C.C. 2015) (failure to provide transition services constituted a "material" deviation from the IEP).

No valid transition assessments were completed prior to Student entering TH. No valid assessments were completed after Student entered TH. One assessment, completed by the Mother, was repudiated in the Mother's credible testimony.²⁷⁰ And the Student's alleged self-determination assessment has no value due, to the fact that, among other defects, the assessment was not scored.²⁷¹ Rather than conduct assessments related to training, education, employment and independent living skills, the District preferred to rely solely on the Student's and Mother's stated preferences, that Student would like a career in child care, rather than investigating the Student's actual capabilities in the workplace. Ultimately, assessments at OA determine that Student is not a good candidate for a career in child care. This determination was based upon observations of Student working at C preschool.²⁷² The law clearly intends that

²⁷⁰ FOF 10.

²⁷¹ FOF 11.

²⁷² FOF 16.

the District, beginning at 14 1/2, should assist students and parents in planning for realistic post-secondary experiences by providing age-appropriate transition assessments. By failing to do transition assessments, the District allowed Student's preference to override possibly realistic expectations, and therefore denied her FAPE.

Finally, on November 9, 2017, the District did modify Student's transition goal.²⁷³ However, even at this point, no evidence was presented by the District of any age-appropriate transition assessments being completed, by either the District or the DRS agency that assisted the District IEP team in drafting this goal. The goal was modified solely on the basis of Parents' and Student's stated preferences and was not based on any appropriate, measurable postsecondary goals based on age appropriate transition assessments as required by IDEA.

In sum, the evidence shows that the District failed to provide Student with any valid transition assessments and failed to provide Student with any individualized transition plan prior to Student entering TH in August of 2017. Further, the District's transition plan provided in the November 2017 IEP failed to be tailored to Student's individual needs and interests because it was based solely on Parents and Student input rather than on required evidence-based evaluations and assessments. If the District had performed the necessary and required assessments and created an individualized assessment plan, it could have provided Student with meaningful and concrete educational and vocational opportunities to pursue. The District's failure, therefore, resulted in a denial of FAPE to Student.

²⁷³ FOF 15.

Issue Six: Whether Orchard Academy is the least restrictive environment to facilitate Student's academic, functional, and vocational needs.

The IDEA contemplates that a FAPE will be provided to handicapped students in most instances in “regular public schools, with the children participating as much as possible in the same activities as nonhandicapped children, but... also provides for placement in private schools at public expense where this is not possible.” *Burlington School Comm. v. Mass. Dept. of Educ.*, 471 U.S. 359, 369, 105 S.Ct. 1996, 85 L. Ed.2d. 385 (1985). Every school district is required to have a continuum of placements available for all disabled students. 34 CFR § 300.115.

Although schools are required to educate students with disabilities with their non-disabled peers to the maximum extent appropriate, 20 USC §1412 (a)(5)(A), the relevant question is whether student's education in a less restrictive environment was satisfactory or could be made satisfactory through reasonable measures. *D.W. v. Milwaukee Public School* 526 F. App'x 672, 61 IDELR 32 (7th Cir. 2013).

Initially, it is noted that TH is not a general education setting. Although under the umbrella of the public school district, it is separated the general education school by approximately two blocks.²⁷⁴ Further, although it shares staff with the general education program, the students placed at TH are there for transitional services and are all disabled.²⁷⁵ Student's November 9, 2017 IEP, shows all Student's minutes are outside of the general education setting.²⁷⁶ District has argued that Student's participation in the YMCA, the high school edible garden and community based instruction enables Student

²⁷⁴ FOF 43.

²⁷⁵ FOF Transition Coordinator Testimony.

²⁷⁶ FOF 28.

to interact with her typically developing peers and provides interaction with the general education setting²⁷⁷ and that Student does not have access to typically developing peers at OA. However, OA may have students who are of average intelligence and do not have disabilities which would offer Student the opportunity to interact with typically developing peers. Additionally, OA also provides community based instruction with opportunities to interact with the general public, albeit, not at the same locations at TH and not at ETHS.²⁷⁸ Participation in Special Olympics does not require a district school affiliation.

In addition to transition and vocational services, OA provides students, with academic instruction. In its May 2018 IEP, OA provided Student with an academic goal in reading.²⁷⁹ Following the February 2018 IEP meeting, the District offered Student an opportunity to participate in additional academic services at ETHS.²⁸⁰ This opportunity was previously discussed, during Student's April 2016, IEP meeting, which the IEP team rejected due to concern about Student potentially feeling disconnected from both the ETHS and TH programs.²⁸¹ The decision to allow Student to spend another academic year at ETHS is an acknowledgement that Student needed additional academic services, which were discontinued at TH, not because they were no longer needed by Student but because TH is a functional not an academic program. No evidence was presented by the District that academic services could be provided to Student at TH.

In determining whether a placement is in the least restrictive environment, under 34 CFR § 300.116 (d) consideration is given to any potential harmful effect on the child

²⁷⁷ FOF _____

²⁷⁸ FOF 44.

²⁷⁹ FOF _____

²⁸⁰ FOF 40.

²⁸¹ FOF 24.

(emphasis added). Further, in determining whether a placement is appropriate, an IEP team must take into account the adverse effects on the child of a parent's resistance to the proposed placement. *Board of Education of Community Consolidated School District No 21, Cook County v. Illinois State Board of Education*, 938 F2nd 712, 18 IDELR 43 (7th Cir. 1991). At the February 2018 IEP meeting, Student read a statement to the IEP team which concluded: "I pleaded with my parents not to make me go back to TH."²⁸² Parents presented evidence to the District that Clinical Psychologist 2 had diagnosed Student as having adjustment disorder, anxiety and depression.²⁸³ After receiving this information, the District did not request to evaluate Student or question Clinical Psychologist 2's finding. Student's time at TH was characterized by Student's ongoing unhappiness, crying and threats to run away.²⁸⁴ The Clinical Psychologist found that many factors at TH would impact Student's emotional wellbeing.²⁸⁵ District presented evidence, that Student appeared to be happy. In reaching her conclusion that the TH program was inappropriate, Clinical Psychologist 2 contrasted the description of Student, as a determined self-advocate and leader, in the District's February 2017 IEP with Student current presenting as having diminished social skills and no longer a leader.²⁸⁶ with Student the District's impression of Student, without assessments or evaluations to support the impression, is insufficient to overcome Parents' uncontradicted evidence that Clinical Psychologist 2 concludes: "it is essential for Student's mental health for her functioning that her

²⁸² FOF 39.

²⁸³ FOF39.

²⁸⁴ FOF38

²⁸⁵ FOF 14.

²⁸⁶ FOF 13.

placement at TH be ended and that she resume her education at an institution suited to her needs.”²⁸⁷

Balancing the two programs, they appear to be strikingly similar. Staffing is different, however, vocational and daily living skills programming, and access to the community are provided. Student is able to receive additional academics at OA, which cannot be provided at TH. TH provides Student with more access to public transportation skills, which OA does not normally provide. The tipping point is the Student’s aversion to attending school at TH and the fact that Student’s issues at TH have resulted in Student suffering from adjustment disorder, anxiety and depression. For these reasons, I find that the equites for these issues favor the Student and that the LRE and appropriate placement for this Student is OA.

Issue One Whether the Student’s placement in the District’s Transition House Program is the appropriate placement for Student.

An educational placement refers to the provision of special education and related services rather than a specific place, such as a specific classroom or specific school. In determining the educational placement of a child, each public agency must ensure: 1) that the placement decision is made by a group of persons, including the parent, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and 2) is made in conformity with the LRE provisions. 34 CFR §300.116(a)(1)(2). The Seventh Circuit has held that neither the IDEA or the federal regulations define the term “placement”. *Board of Education of Community High*

²⁸⁷ FOF 13.

school District 2018 v. Illinois State Board of Education, 103 F3d 545 (548-549) (Cir. 1996). The Seventh Circuit has declined to adopt any sort of multi-factor test for assessing whether a child must remain in a regular school. *Ross*,^{supra}. See also *Beth B. v. Van Clay*, 282 F.3d 493, 499 (7th Cir. 2002). The ultimate question is whether the education in the conventional school was satisfactory, and, if not, whether reasonable measures would have made it so. *Id.* The benchmark under IDEA for determining the appropriateness of a student's educational placement is that the district must place the student in a setting that is capable of fulfilling the students IEP, *Wade v. District of Columbia* 118 LRP34419 (D.D.C. 2018) citing *Johnson v. District of Columbia* 962 F. Supp 2d 263, 265 (D.D.C. 2013)

For this Student, it has already been determined that TH is not capable of providing Student with the academic instruction which she requires. The offer of a split program for Student was already rejected by the IEP team two years before it was proposed to remedy Student's need for an academic goal in 2018. Additionally, the District's failure/delay to appropriately respond to the Student's lack of having any transition assessments, IEP transition goals, vocational placement,²⁸⁸ and as of February 2018, serious mental health issues, make the TH program not an appropriate placement for this Student. The Parents' unilateral placement at OA is appropriate.

REMEDIES

Parent's have requested the following remedies to address any finding that Student was denied a free appropriate public education in violation of IDEA. I would like to address some of these requests:

REMEDIES

Parent's have requested the following remedies to address any finding that Student was denied a free appropriate public education in violation of IDEA. I would like to address some of these requests:

- I. The District to assume full financial responsibility for all expenses associated with Student's placement at Orchard Academy, including tuition and transportation, for two years from the date of decision of in this case and**
- II. The District shall provide Student with compensatory education in the form of tuition payment and transportation for an additional semester and OA beyond what is ordered above to make up for the deficient instruction and lack of services provided to Student by the District during Student's placement in the District's TH Program.**

Compensatory education is an equitable remedy hearing officers can award to Parents. The purpose of compensatory education is to replace lost educational opportunities and should be awarded to compensate the student for the district's failure to provide free appropriate public education. The majority approach is defined best in *Reid v. District of Columbia* 401 F. 3d 516 (D.C. Cir 2005). In determining whether to award compensatory education, the award should be based on the equitable factors present in the case. *Id.* Compensatory education must compensate for past losses of educational benefit. *Id.*

In determining that the District failed to provide Student a FAPE from April 18, 2106 to the date of the hearing, the IHO determined that the Student was denied educational opportunity due to the fact that the District carried forward Student's previous goals and did not write her goals based upon Student's unique needs. The District did nothing to modify the goals based on current evaluations or the Student's failure or success in achieving the goals.

In determining that the District failed to provide Student a FAPE for failure to provide Student with appropriate assessments and evaluations to determine and put in place appropriate transition goals, the IHO found that the failure to have an appropriate IEP from August 28, 2017 to November 9, 2017 was a violation of FAPE because the Student received no educational services based on an IEP which provided FAPE during this time. Irrespective of Student's absences due to her knee surgery, the District had no transition IEP in place. Further, even after November 9, 2017, the IEP that was agreed to by the team was not based on appropriate assessments and evaluations but rather on the subjective opinion and preferences of the Mother and Student. Had the District provided Student with the appropriate vocational assessments the Student could have been working toward goals which were appropriate given her unique abilities. Student lost educational benefit due to the District's failure to provide FAPE. In order to compensate for the loss of approximately one semester of educational opportunity, I award the Parents/Student one additional semester at OA, with transportation, which must be completed by Student prior to December 31, 2019.

III. The District to reimburse Parents for all costs they have incurred related to placement at Orchard Academy, including tuition and transportation expenses, from February 13, 2018, the date placement began to close of hearing.

Under the IDEA, a hearing officer has discretion whether to order reimbursement, and whether that reimbursement should be awarded in whole or in part. 20 U.S.C. 1412(a)(10)(C)(iii). "When a court or a hearing officer concludes that the school district failed to provide a FAPE and a private placement was suitable, it must consider all relevant factors, including a notice provided by the parents and the school district's opportunities for evaluating the child, in determining whether reimbursement

for some or all of the cost of the child's private education is warranted." *Forest Grove School Dist. v. T.A.*, 557 U.S. 230 52 IDELR 151, p. 9 (2009).

The evidence has shown that the District has not provided FAPE to the Student and the District's proposed placement would not provide Student with a FAPE. Further, it was determined that OA is the Student's least restrictive environment and is the proper placement for the implementation of the Student's May 2018 IEP. Having determined that the District failed to provide Student with FAPE and that the notification of unilateral placement was not at issue in this case, the unilateral placement is determined to be proper. Further, the IHO finds the Parents fully cooperated with the District following the notification of unilateral placement, including attending an IEP meeting on February 14, 2018 and follow up discussions with the District. The District had the opportunity to request a psychological evaluation to attempt to refute the Parents' Psychologist's diagnosis that Student was suffering from adjustment disorder, anxiety and depression brought on by Student's placement in TH. District failed to request to evaluate or challenge the diagnosis.

Reimbursement to the Parents' of the costs associated with Student's placement at OA , found to be 1)tuition; 2) transportation; 3) Clinical Psychologist; 4) Clinical Psychologist 2; and 5) VR will be awarded.

An administrative hearing officer does not have the authority to award attorney's fees in an IDEA due process proceeding. *D.G. v. New Caney Independent School Dist.*, 806 F.3d 310, 66 IDELR 209, pgs. 5-6 (5th Cir. 2015). The IDEA hearing is not the appropriate forum for the Parents to seek this remedy, therefore the request to reimburse them for the attorneys fees paid to Cleary & Hanson LLC is therefore denied.

ORDER

1. The District shall convene an IEP meeting within 15 school days following receipt of this Order and place the Student at OA at District expense and provide round trip transportation for the Student from Student's residence to OA and returning at the conclusion of the OA school day from OA to Student's residence.
2. The District shall maintain Student at OA , with transportation, until the completion of the 2018-2019 school year not including extended school year.
3. As compensatory education for the failure to provide Student FAPE, Student shall remain at OA at District's expense, with transportation until Student reaches the age of 21 plus 364 days.
4. The District shall reimburse Parents for:
 - a. Transportation provided by the parent form home to OA round trip of 5.4 miles/trip, 4 trips per day for 67 days X 1,447.2 miles at .545 totaling \$788.72.
 - b. Tuition paid to OA upon presentment of a final bill showing payments to date (including any payment made prospectively for the Fall 2018-19 school year).
 - c. The District is ordered to reimburse Parents for the services of:
 - i. Clinical Psychologist 2 in the amount of \$2,940.00.
 - ii. Clinical Psychologist in the amount of \$1900.00.
 - iii. VR in the amount of \$2,200.00

Within 45 calendar days of receipt of this Order, the Evanston Township High School District #202 shall submit proof of compliance to:

Illinois State Board of Education
Program Compliance Division
100 N. First St.
Springfield, IL 62777-0001

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: August 28, 2018

/S/Mary Jo Strusz

Mary Jo Strusz, Impartial Hearing Officer

4113 N. Paulina St.

Chicago, IL 60613

maryjostrusz@gmail.com

APPENDIX A

Not a witness but her report was admitted into evidence and considered as part of this decision: Anne Hatcher Berenberg PhD (Clinical Psychologist 2). A licensed clinical psychologist. Her undated report on Student from 2018 was admitted into evidence as P-44. There was no objection from the District.

Business' associated with Student

1. Watson VR Resources, Inc. (VR), a corporation owned by Parent witness Elizabeth Watson.
2. Cherry Preschool (C preschool), located in Evanston.

Witnesses/Parent

1. Amanda Hensley (Social Worker), holds a Master of Social Work degree. She also holds a Type 73 certification and is CPI certified. She is the School Social Worker for Orchard Academy in Skokie Illinois. She has held that position for two and on-half (2 1/2) years. Prior to that she was an outreach prevention specialist at a private school.²⁸⁹
2. Elizabeth Watson (Vocational Counselor), holds a Master of Science in Rehabilitation Counseling from Southern Illinois University (Carbondale). She is a licensed clinical professional counsel, and a certified rehabilitation counselor.²⁹⁰
3. Margot Touris (Clinical Psychologist), holds a PhD as clinical psychologist from Loyola University (Chicago), she is licensed in the State of Illinois. She has been in private practice of neuropsychological evaluations, consultations and psychotherapy with individuals, children and families since 1990.²⁹¹
4. Kenneth S. Kozin (Therapeutic Principal), holds an MA in guidance and counseling from Northern Illinois University, he has a Type 75,73,10 (educable Mentally Handicapped, 10 (specific leaning disabilities), 10 (social/emotional disorders), 10 (trainable mentally handicapped), and 03 certification in addition to being a learning behavior specialist (LBS1) and being the Principal of Orchard Academy. ²⁹²
5. Heather Martino, (Mother).

Witnesses/District

²⁸⁹ Social Worker testimony and P-57.

²⁹⁰ Vocational Counselor testimony and P-55.

²⁹¹ Clinical psychologist testimony and P-56.

²⁹² Therapeutic Principal testimony and P-58.

1. James D. Wilczynski (School Psychologist), holds a PhD in school psychology from Loyola University, with a minor in assessment and research methods. He is employed as a school psychologist since August 2000 with the District. He holds a Type 73 certificate and is a nationally certified school psychologist (NCSP). ²⁹³
2. Nicole Mims Johnson (Transition Coordinator), holds a Master of Arts in special education from Roosevelt University in Chicago, Illinois. She has a Certificate of Advanced Study (C.A.S in Administration and Supervision/Education Leadership from National-Louis university, Skokie, Illinois. She holds a Type 75 and 10(LBS1) certification.²⁹⁴
3. Dr. Lanee T. Walls Ed.D., (Sped Director), holds a doctorate from Loyola University Chicago, she is a superintendent, director of Special Education, School Psychologist and holds an LBS1 certification. ²⁹⁵
4. Amy Verbrick (Assistant Director), holds an M.A Ed in Education leadership, from Olivet Nazarene University and an M.S Ed in special education from Northern Illinois University. She is the assistant director of special education for ETS. She has an LBS1 certification.²⁹⁶

²⁹³ School Psychologist testimony and D16-1.

²⁹⁴ Transition Coordinator Testimony and D-18.

²⁹⁵ Sped Director Testimony and D-17.

²⁹⁶ Assistant Director testimony and D-19.