

Before the
Administrative Hearing Commission
State of Missouri



), in the interest of)
,)
)
Petitioner,)
)
vs.) No. 19-1183
)
SPRINGFIELD R-XII SCHOOL DISTRICT,)
)
Respondent.)

DECISION

(Parent) filed a due process complaint against the Springfield R-XII School District (District) alleging that the District failed to provide (Student) with a free appropriate public education (FAPE) pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq., because the District failed to develop and implement an Individualized Education Plan (IEP) that was reasonably calculated to provide Student appropriate progress in light of Student’s unique circumstances. Parent’s allegations focus on the years 2017-2018 and 2018-2019.

We disagree with Parent as to the IEPs developed during the 2017-2018 school year and find that the District provided Student FAPE. We agree with Parent as to the IEPs from August 28, 2018-November 13, 2018, and November 13, 2018-December 17, 2018, and find that the District failed to provide FAPE during this time. We agree with the District that Student received FAPE for the IEP effective from December 16, 2018 through the present time; however,

in light of the District's neuropsychological evaluation, a new IEP is needed that takes into account that recent evaluation.

Procedure

On September 17, 2019, Parent filed her due process complaint against the District. On September 26, 2019, the District filed a response to the complaint. We held a prehearing conference by phone on October 8, 2019.

On October 29 and 30, 2019, we held a hearing. Attorney Benjamin Brockert of Brockert Legal Services represented Parent. Attorney Ransom A. Ellis, III of Ellis, Ellis, Hammons & Johnson, P.C. represented the District. This case became ready for decision on November 14, 2019, when the last brief was filed.

Findings of Fact

1. At the time of the hearing, Student had an educational diagnosis of Other Health Impairment. He has a diagnosis of Attention Deficit Disorder—Nonattentive (ADD) from a physician, speech articulation disorder, auditory processing disorder, and dyslexia. Student has vision with correction. He was a preemie who spent 21 days in the neonatal intensive care unit after having an insufficiency with blood flow and oxygen.

2. The District is the largest public school district in the state of Missouri with approximately 25,000 students and 3,000 identified children with a disability under the IDEA.

Parent's Witnesses

3. Margaret Medlen is a speech-language pathologist with six years of experience in her field. She has worked with Student for about a year and a half, and she was in charge of the speech part of his IEP and his language testing during the relevant period.

4. Carol Marlatt is a second grade teacher at Jeffries Elementary in the District. She has held that position in the District for 21 years. She has an undergraduate degree from MSU in elementary education and a master's degree from Drury in elementary education.

5. Ciara Howell has a master's degree in special education and was hired by the District in August of 2010. She worked two years as a paraprofessional at Delaware School, and then worked in a functional skills classroom for four years. She moved to Jeffries Elementary and has been working in a cross-categorical resource classroom (cross-cat). In a cross-cat situation, the student spends most of the time in the regular classroom, but is pulled out to receive extra services in such areas as reading, writing, and mathematics. Howell's students are typically in the third through fifth grades. She has taught Student since September 24, 2018. She was not involved in Student's IEP team prior to that date.

6. Thomas Masterson is the building principal at Jeffries Elementary. This is his second year in this position. He has a master's degree in educational administration from Missouri State, and was a classroom teacher and assistant principal. All of his administration work has been at the elementary level. Masterson sees Student "in passing," and has never worked with him in a classroom setting.

7. Parent testified.

District's Witnesses

8. Nancy McBride is a school psychologist and has been employed by the District for 13 years. She has a BA in elementary education from Park University, an M.Ed. in education psychology from the University of Nevada-Reno, an Ed.S in school psychology from the University of Nevada-Reno, and a Ph.D. in counseling and educational psychology from the University of Nevada-Reno. She is a certified clinical trauma professional and holds a national certificate in school psychology. In her position, McBride conducts social-emotional evaluations, administers IQ tests, and intervenes in crisis situations. She participates in behavior analysis, behavior interventions, and school neuropsychological evaluations. McBride completed a school neuropsychological evaluation of Student on September 9, 2019.

9. Bradley Quirk has been employed by the District for 14 years. He was a classroom teacher in English and in special education, an assistant principal, principal coordinator of professional development, assistant director of special services, and a director. Currently, Quirk is the director of special services. He has a BA in education from the University of Missouri, an MA in educational administration from Missouri State, an Ed.S degree in counseling psychology from the University of Missouri, and a Ph.D. in educational leadership from William Woods. He works as a liaison between the District and the Department of Elementary and Secondary Education (DESE), and supervises other special education professionals.

Preschool and Kindergarten

10. Student previously attended preschool as a child with a developmental delay. He was identified as having a disability in the area of communication: speech production with weaknesses in fine motor, articulation errors and difficulty with phonological processes.

11. Parent has spent 30 minutes per day with Student since he was in pre-K going over studies. Parent is trained as a licensed practical nurse, but she does not have a current license.

12. The District re-evaluated Student on April 19, 2016, and found Student eligible for Specific Learning Disability in the areas of written expression and mathematics calculation. Additionally, Student had difficulties with speech articulation.

13. Philip K. Mothersead, Ph.D, is a licensed psychologist with Mercy Clinic Neuropsychology. He evaluated Student in the summer of 2016 and concluded that he had a diagnosis of attention deficit disorder non-attentive type, developmental coordination disorder, and expressive language delays.

14. Following Mothersead's evaluation, the District re-evaluated Student at Parent's request and found Student eligible for special education services for meeting the criteria for Other Health Impaired for his ADD, non-attentive type.

15. The District held an IEP meeting on November 22, 2016 to determine the IEP goals for Student's kindergarten year (2016-2017) based upon the re-evaluation.

16. Student's IEP goals, progress made, and accommodations¹ for the IEP that was effective 11/22/16 through 11/21/17 according to the District included:

Goal 1 - Articulation - During the course of this IEP, [Student] will increase speech intelligibility by decreasing the phonological process of stopping from 60% accuracy at the word level to 80% accuracy at the sentence level.

- 12/21/16 - [Student] is producing target phonemes in conversation: /f/ with 92%. /v/ with 80%. The /s, z, sh/ have not yet been addressed since he came to Cowden at the beginning [of] December. Continue towards 80% for all phonemes.
- 03/09/17 - [Student] is producing target phonemes in conversation: /f/ with 96%. /v/ with 83%. /s/ with 47%. /z/ with 53%. He is producing /sh/ in words with 13%. Continue towards 80% for all phonemes. He is making good gains!
- 05/18/17 - [Student] is producing the target phonemes in structured conversation: /f/ with 100%. /v/ with 73%. /s/ with 67%. /z/ with 53%. And /sh/ with 55%. Continue towards 80% for all phonemes.
- 10/13/17 - [Student] is producing target phonemes in structured conversation: /f/ with 92%, /v/ with 94%. He is producing target phonemes in sentences: /s/ with 72%, /z/ with 53%, and /sh/ with 40%. He has regressed with some phonemes and improved on others. Continue towards 80% for all phonemes.

Goal 2 - Articulation - During the course of this IEP, [Student] will increase speech intelligibility by decreasing the phonological process of velar fronting from 75% accuracy at the word level to 80% accuracy at the sentence level.

- 12/21/16 - [Student] is producing target phonemes in sentences: lg/ with 80%. The /kl has not yet been addressed at Cowden since he has only been at school since the beginning of Dec. Continue to address all phonemes towards 80% at the conversational level.

¹ Resp. Exs. 1 and 2. All of the IEP goals, progress and accommodations that follow are from these exhibits.

- 03/09/17 - [Student] is producing target phonemes in conversation: /kl with 50%, lg/ with 53%. Continue towards 75% for both phonemes.
- 05/18/17 - [Student] is producing target phonemes in structured conversation: /kl with 59%. lg/ with 55%. Continue towards 75% for both phonemes.
- 10/13/17 - [Student] is producing target phonemes in sentences: /kl with 60%. lg/ with 53%.

Goal 3 - Pre-Academic Math - For the duration of this IEP, when presented with numbers 1-20, [Student] will expressively identify numbers by naming each as presented on flashcards with 80% accuracy from a baseline of 60%.

- 12/01/16 - [Student] is making progress.
- 10/13/17 - Goal Met - [Student] is able to add multi-digit numbers without regrouping and subtract numbers with borrowing.

Goal 4 - Pre-Academic Math - For the duration of this IEP, when presented with a set of items, [Student] will count objects from the set by using one-to-one correspondence to remove a designated number from a larger display from a baseline of 65% accuracy to 80% accuracy.

- 10/13/17 - Goal Met.

Goal 5 - Personal Management- For the duration of this IEP, when presented with a task on his instructional level, [Student] will stay on task in order to complete the assignment in the time provided with no more than 2 teacher prompts in 5 minutes from a baseline of 5 or more prompts in 5 minutes.

- 10/13/17 - Goal Met - When working on an assignment at the table [Student] has maintained time on task. He can also work for extended periods of time on iPad apps such as Lexia or Dreambox.

Goal 6 - Pre-Academic Written-For the duration of this IEP, when presented with a target word, [Student] will write a 3 word sentence using correct capitalization and punctuation in 3/4 opportunities from a baseline of 1/4 opportunities.

- 12/21/16 - [Student] can currently copy the target word.
- 03/09/17 - Cowden has not addressed this goal due to his need to identify letters and their sounds, before moving on to writing. [Student] can currently write his name and can copy letters. He does not adhere to formation rules.
 - 05/18/17 - Not making Progress - [Student] is working on the formation of his letters and adhering to lines.

Goal 7 - Pre-Academic Reading - For the duration of this IEP, when presented with upper and lower case letters, [Student] will expressively identify 52/52 letters from a baseline of 33/52.

- 10/13/17 - Goal Met. [Student] can order and name all upper and lower case letters. When he is distracted he will mix U, V, W. And Y, but he can always correct himself.

IEP Accommodations Provided:

- Extended Time for Completing- (Math)
- Read Tests to Student - (Language Arts, Math, Science, Social Studies)
- Modify Test Format- (Math)
- Alternative Setting- (Language Arts, Math)
- Adjustments for Speech/intelligibility/fluency- (All Areas)
- Directions Given in a Variety of ways - (Language Arts, Math)
- Use of Positive/concrete Reinforcers - (Language Arts, Math)
- Check often for Understanding/Review- (Language Arts, Math)
- Frequent eye contact/proximity control - (Language Arts, Math)
- Extended time for Oral Response - (All Areas)

2017-2018 School Year (1st grade)

17. Medlen worked with Student's speech articulation when he started at District. Student had a hard time producing specific sounds, which caused an impact to his spelling, reading, writing, and understanding in the classroom. Student's language was evaluated using the CLEF-4, which found he was within normal limits; however, there was a significant discrepancy between his receptive and expressive language scores, meaning he had a hard time comprehending and understanding. Medlen targeted specific speech sounds and felt that Student, while slow, made progress. Medlen believed that there were other issues going on with Student that were having an impact on his learning. Student made a medium gain between when Medlen started and the November 2017 IEP, moving from the word level to sentence level.

18. On 11/17/17, the District held an annual IEP meeting.

19. Student's IEP goals, progress made, and accommodations for the IEP that was effective 11/17/17 through 8/28/18 according to the District included:

Goal 1 - Basic Reading - During the course of this IEP, given a field of 3, [Student] will increase his basic reading ability by identifying Dolch sight words with 90% accuracy from a baseline of 0%.

- 12/21/17 - [Student] is reading Pre-Primer Dolch Sight Words with 32% accuracy.

- 03/08/17² - [Student] is reading Pre-Primer Dolch Sight Words with 15% accuracy.
- 05/16/18 - [Student] is reading Dolch Sight Words-Pre-Primer level with 70% accuracy. He is working on increasing his decoding skills by focusing on specific word families in passages at his instructional level. This quarter he has worked on the following word families, ab, ad, ag, am, an. His pretest average is 13%. His weekly test average is 51%. After additional practice and activities, his post-test average is 80%."
- 10/12/18 - This goal was not addressed this quarter.

Goal 2 - Math Computation - During the course of this IEP, [Student] will increase his single-digit addition and subtraction accuracy from 0% to 80%.• 12/21/17 - [Student] is adding and subtracting single-digit math facts with 25% accuracy.

- 03/08/18 - [Student] is adding and subtracting single-digit math facts with 19% accuracy. A new fact fluency program (Reflex) was implemented during third quarter. [Student] continues to make progress in this goal area.
- 5/16/18 - [Student] is completing single-digit and subtraction with 33% accuracy as measured by Reflex. [Student] has gained 78 facts since beginning Reflex in February. His weekly fluency gain is 5.7 facts. He has completed Reflex sessions at least 3 times a week and solved 4,502 total facts.
- 10/12/18 - This goal was not addressed this quarter.

Goal 3 - Written Expression - During the course of this IEP, when presented with a picture, [Student] will write a sentence about a picture by demonstrating correct grammar to describe the context and using rules of capitalization and punctuation from a baseline of 0% to 80%.

- 12/21/17 - When presented with picture, [Student] is able to write a sentence about the picture by demonstrating correct grammar to describe the context and using rules of capitalization and punctuation with 20% accuracy.
- 03/08/18 - When presented with a picture, [Student] is able to write a sentence about the picture by demonstrating correct grammar to describe the context and using rules of capitalization and punctuation with 32% accuracy.
- 05/16//18 - When presented with a picture, [Student] is able to write a sentence about the picture, using correct grammar, describe the context and use rules of capitalization and punctuation with the following accuracy percentages. Grammar-42%, context-70%, capitalization-45%, punctuation-60%. Overall, [Student] is able to write sentences correctly with an average of 54% accuracy.
- 10/12/18 - This goal was not addressed this quarter.

Goal 4 - Personal Management - For the duration of this IEP, when presented with a task on his instructional level, [Student] will stay on task in order to complete the assignment in the

² The correct date may be in 2018, but this is the date provided in Resp. Ex. 1.

time provided with no more than 2 teacher prompts in 5 minutes from a baseline of 5 or more prompts in 5 minutes.

- 12/21/17 - When presented with a task on his instructional level, [Student] is able to stay on task in order to complete the assignment in the time provided with 4 teacher prompts.
- 03/08/18 - When presented with a task on his instructional level, [Student] is able to stay on task in order to complete the assignment in the time provided with less than 4 teacher prompts.
- 5/16/18 - Currently, when presented with a task on his instructional level, [Student] is able to stay on task in order to complete the assignment in the time provided with an average of 2 prompts in 6 minutes.
- 10/12/18 - This goal was not addressed this quarter.

Goal 5 - Speech Articulation - During the duration of this IEP, when given stimulus materials, [Student] will demonstrate increased speech intelligibility by producing target phonemes /kl, lg/, /sl, lz / , /sh/ in all positions of words in the sentence level from 55- 80% accuracy over three tracking sessions.

- 12/21/17 - [Student] is now producing /kl and /g/ at word level in imitation with 90% accuracy; he is able to produce /kl and /g/ in the beginning and end of words at word level independently with min. verbal cues with minimal pairs cards with 85%.
- 03/08/18 - /kl in the initial position of words at sentence level independently, 80% across 3 sessions; will progress to sentences with multiple /kl words and reading paragraph level; /g/in the initial word position of words at sentence level independently 50% across 1 session; increasing to 100% with verbal cues. /kl in the middle position of words at sentence level independently 50%; increasing to 100% with verbal cues; /kl in the final position of words at sentence level in imitation, 80%.
- 5/16/18 - [Student] has met his goal for /kl and /g/ at sentence level in sentences containing only 1 /g/ or /kl word. He is producing /kl in all positions of words at sentence level in sentences containing multiple /kl words in imitation with 85% across 1 session. He is producing lg/ in all positions of words at word level independently with 78% increasing to 90% with mod verbal cues. He is making slow progress due to consistent cues for attention and occasional behaviors (i.e. ignoring therapist's instructions, whispering target sounds, rushing through target practice, not putting forth his best effort when target words are more difficult and saying "I can't do it," talking to other students during target practice, etc.
- 10/12/18 - [Student] has made excellent progress with his articulation goal this quarter. He is producing /kl and /g/ in all positions of words (when not in a blend, "glue", "green", "cry") with 90-100% accuracy at conversation level independently across 2 treatment sessions. He continues to exhibit difficulty with lg/ and /kl blends. He is producing /sh/ at sentence level with 80-90% accuracy across 2 sessions. Goal Met for /s/ and /z/ during previous school year. He is producing /l/ in the initial position of words at word level independently on 100% of trials and at phrase level in imitation with min to mod

verbal, gesture and visual cues (i.e. mirror) with 90% accuracy. He is producing /l/ in the medial position of words at word level in imitation with max visual and placement cues with 70% accuracy.

Accommodations Provided:

- Extended Time for Completing- (Math)
- Read Tests to Student - (Language Arts, Math, Science, Social Studies)
- Modify Test Format- (Math)
- Alternative Setting- (Language Arts, Math)
- Adjustments for Speech/intelligibility/fluency- (All Areas)
- Directions Given in a Variety of ways - (Language Arts, Math)
- Use of Positive/concrete Reinforcers - (Language Arts, Math)
- Check often for Understanding/Review- (Language Arts, Math)
- Frequent eye contact/proximity control - (Language Arts, Math)
- Extended time for Oral Response - (All Areas)

20. On April 5, 2018, Mamie Jaycox at the Mercy Auditory Department completed an auditory processing disorder evaluation. Jaycox determined that Student had an auditory processing disorder and suggested that the District complete a comprehensive speech and language evaluation. This was done by Medlen.

21. Student's IEP was amended at the end of 1st grade on May 14, 2018.

IEP Amendment effective 5/14/18 through 8/28/18 specified additional accommodations including:

Accommodations Provided:

- Teacher Provided Notes (All Areas)
- Extended Time for Completing- (Math)
- Read Tests to Student - (Language Arts, Math, Science, Social Studies)
- Modify Test Format- (Math)
- Alternative Setting- (Language Arts, Math)
- Preferential Seating- (All Areas)
- Adjustments for Speech/intelligibility/fluency- (All Areas)
- Directions Given in a Variety of ways - (All Areas)
- Give Oral Cues/Prompts - (All Areas)
- Extended Time for Completion- (All Areas)
- Use of Positive/concrete Reinforcers - (Language Arts, Math)
- Repeated Review and Drill- (All Areas)
- Check often for Understanding/Review- (All Areas)
- Frequent eye contact/proximity control - (Language Arts, Math)
- Extended time for Oral Response - (All Areas)
- Extended time for Written Response - (All Areas)

- District provided a listening system for the Student in the classroom to enhance the teacher's voice over the classroom noise.
- Student was placed in the classroom near the teacher.
- Student was placed in the classroom away from auditory distractions (e.g. windows facing playground or near hallway).
- Use of a compensatory strategies including, but not limited to: rephrasing oral material (avoid auditory fatigue); summarizing what was read; visual aids from lessons; directions in a variety of ways; vocabulary words sent home.

22. Overall from 5/14/18 to 11/13/18, Student's goals were generally appropriate considering that he could not identify his letters and numbers and had articulation issues; however, Student's progress in his goals as described by Parent are incongruent with the District's reported progress of Student toward his goals. At best, Student was making minimal progress on his goals. The District should have been alerted that Student's slow progress was an indicator that his IEP was not producing meaningful progress and Student's unique needs were not being addressed.

2018-2019 School Year (2nd grade)

23. For the first quarter of 2018-2019, Parent asked that Student spend time in Marlatt's classroom instead of the special ed classroom and only receive speech services (60 minutes) and personal management (150 minutes) in the special education classroom. The IEP amendment stated that this hold was until a review of progress and a decision could be made regarding services after 10/12/18 (evaluation time period).

24. Student could not say the alphabet, specifically l, m, n, o, p, and he could not write it down or place the alphabet in order until the middle to end of his 1st grade year despite working every day on it. According to Parent, "He can write them. He—when presented on print, he cannot recognize them or come to what that letter is without just stopping and maybe even going through the whole alphabet again." Student cannot formulate a sentence that is proper, cannot identify all of the letters correctly, and still struggles with letters of the alphabet.

25. Parent was frustrated with the educational progress of Student and believed that further evaluation was needed. Parent felt that the work Student was doing in the special education classroom had not helped Student, and that Student's enthusiasm for school was adversely affected by being pulled out, so she wanted to at least try something else for a short time.

26. Parent requested a 1:1 paraprofessional for Student and occupational therapy services. The District refused these requests, but agreed to a trial change of services and placement.

27. Student's IEP was amended on August 28, 2018. While the amendments included some new goals, many of the goals from the prior IEP were repeated.

28. Student's IEP goals, progress made, and accommodations for the AMENDED IEP that was effective 8/28/18 through 11/13/18 according to the District included:

Goal 1 - Basic Reading - During the course of this IEP, given a field of 3, [Student] will increase his basic reading ability by identifying Dolch sight words with 90% accuracy from a baseline of 0%.

- Work not performed on this Goal during the effective dates of this IEP Amendment due to parent's request during IEP Meeting on 8/27/18 that the Student only receive speech services for 60 minutes per week and personal management for 180 minutes per week. See: Present Level of Services.

Goal 2- Math Calculation- During the course of this IEP, [Student] will increase his single-digit addition and subtraction accuracy from 0% to 80%.

- Work not performed on this Goal during the effective dates of this IEP Amendment due to parent's request during IEP Meeting on 8/27/18 that the Student only receive speech services for 60 minutes per week and personal management for 180 minutes per week. See: Present Level of Services.

Goal 3 - Personal Management-During the course of this IEP, when [Student] is given a set of up to 10 pictures, words, or numbers, he will be able to recall the information with 80% accuracy.

Goal 4- Written Expression- During the course of this IEP, when presented with a picture, [Student] will write a sentence about a picture by demonstrating correct grammar to describe the context and using rules of capitalization and punctuation from a baseline of 0% to 80%. •

- Work not performed on this Goal during the effective dates of this IEP Amendment due to parent's request during IEP Meeting on 8/27/18 that the Student only

receive speech services for 60 minutes per week and personal management for 180 minutes per week. See: Present Level of Services, page 294.

Goal 5 - Personal Management - For the duration of this IEP, when presented with a task on his instructional level, [Student] will stay on task in order to complete the assignment in the time provided with no more than 2 teacher prompts in 5 minutes from a baseline of 5 or more prompts in 5 minutes.

Goal 6 - Speech Articulation - During the duration of this IEP, when given stimulus materials, [Student] will demonstrate increased speech intelligibility by producing target phonemes /k/, /g/, /s/, /z/, /sh/ in all positions of words in the sentence level from 55-80% accuracy over three tracking sessions.

- 10/12/18 - [Student] has made excellent progress with his articulation goal this quarter. He is producing /k/ and /g/ in all positions of words (when not in a blend, "glue", "green", "cry") with 90-2100% accuracy at conversation level independently across 2 treatment sessions. He continues to exhibit difficulty with lg/ and /kl blends. He is producing /sh/ at sentence level with 80-90% accuracy across 2 sessions. Goal Met for /s/ and /z/ during previous school year. He is producing /l/ in the initial position of words at word level independently on 100% of trials and at phrase level in imitation with min to mod verbal, gesture and visual cues (i.e. mirror) with 90% accuracy. He is producing /l/ in the medial position of words at word level in imitation with max visual and placement cues with 70% accuracy.

Accommodations Provided:

- Teacher Provided Notes (All Areas)
 - Extended Time for Completing - (Math)
 - Read Tests to Student - (Language Arts, Math, Science, Social Studies)
 - Modify Test Format- (Math)
 - Alternative Setting- (Language Arts, Math)
 - Preferential Seating- (All Areas)
 - Adjustments for Speech/intelligibility/fluency- (All Areas)
 - Directions Given in a Variety of ways - (All Areas)
 - Give Oral Cues/Prompts - (All Areas)
 - Extended Time for Completion- (All Areas)
 - Use of Positive/concrete Reinforcers - (Language Arts, Math)
 - Repeated Review and Drill - (All Areas)
 - Check often for Understanding/Review- (All Areas)
 - Frequent eye contact/proximity control - (Language Arts, Math)
 - Extended time for Oral Response - (All Areas)
 - Extended time for Written Response - (All Areas)
- District agreed with Parent's request that the Student only receive speech services for 60 minutes per week and personal management for 150 minutes per week in the special education classroom through the 1st quarter of school year 2018-19. Effective 11/13/18 -A new goal for working memory was added to the IEP.
- District provided a listening system for the Student in the classroom to enhance the teacher's voice over the classroom noise.

- Student was placed in the classroom near the teacher.
- Student was placed in the classroom away from auditory distractions (e.g. windows facing playground or near hallway).
- Use of a compensatory strategies including, but not limited to: rephrasing oral material (avoid auditory fatigue); summarizing what was read; visual aids from lessons; directions in a variety of ways; vocabulary words sent home.
- Effective 9/18/18 -No absence related to the Student's disability or to his outside diagnosis of Central Processing Disorder will count against privileges related to attendance.

29. Student attended second grade with Marlatt in 2018-2019 school year. Marlatt participated in Student's IEPs. She worked closely with him on guided reading and math. Marlatt worked with Student on his letters, sounds, and magnetic letters, and did as much as possible for a child at Student's level. She believed he was doing the best he could. In 2nd grade, the grades are 3—mastery; 2—he can do it with the teacher; 1—cannot do it. Student's grades were primarily 1's and 2's.

30. Student could not perform the work in the general education classroom in 2nd grade.

31. The iReady reading assessment is a computer based assessment used as a resource by the classroom teacher to test the children to see where they are in reading and math. At the end of 1st grade, Student's reading was emerging at the beginning kindergarten level. Student also scored at the beginning level of kindergarten in math. At the beginning of 2nd grade, Student's developmental reading assessment (DRA) level was 3, which is also a kindergarten reading level. At the end of 2nd grade, Student was at a DRA level 4.³

32. Student was significantly or substantially behind his same-age peers in reading and writing. His math was somewhat better.

³ The Commission recognizes that these tests are not necessarily determinative of educational levels; however, the teachers in the District used them in the classroom and they were mentioned in Student's IEP.

33. Marlatt was not familiar with dyslexia other than knowing it was a medical diagnosis. Marlatt chose in-service training on a new reading/writing program instead of dyslexia training because she felt it better served all students.

34. Marlatt's opinion was that the Student's IEP goals in 2nd grade were the type of instruction found normally for kindergarten or 1st grade.

35. Despite Parent's request that Student have a trial in the regular classroom and specialized attention by Marlatt, Student made some progress in articulation goals.

36. Around October 24, 2018, Marlatt obtained an FM system⁴ for use with Student to address his auditory processing disorder diagnosis and enable him to hear the teacher's voice over the classroom. Student also sat near the front of the room for vision purposes and away from distractions for hearing purposes. Marlatt met the accommodations for Student. The vocabulary words were words to learn the meaning of, not to spell or read.

37. Student could not recognize letters or numbers or read in 2nd grade. The IEP was not assisting Student to make progress, and the District had not yet identified what would best meet his needs.

38. On November 13, 2018, the IEP team met and reviewed Student. Jt. Ex. 23.

39. At the November 13, 2018 IEP meeting, Parent specifically had the concern that Student may be dyslexic.

40. Parent requested a complete re-evaluation because she did not understand why Student was so far behind. The District told her in the IEP meeting that Student screened very high and was likely to have dyslexia. They said Parent could contact the dyslexia center in Springfield, but the District had no answers.

⁴ An FM system involves a headset for the student and a microphone for the teacher so the student can better hear her voice.

41. Knowing and recognizing that Student likely had dyslexia, the District should have written goals designed for his unique needs.

42. Parent agreed Student made mixed progress on his IEP goals.

43. Parent's reason for delaying the goals and starting the evaluation was so that Student could have all of his accommodations in place (such as the FM system) to be able to obtain a better test result.

44. Student's IEP goals, progress made, and accommodations for the IEP that was effective 11/13/18 through 12/17/18 according to the District included:

Goal 1 - Personal Management - During the course of this IEP, when [Student] is given a set of up to 10 pictures, words, or numbers, he will be able to recall the information with 80% accuracy.

- 12/20/18 - [Student] is recalling items of 3 with 74% accuracy. He is recalling sight words with 41% accuracy.

Goal 2 - Articulation/Phonology - During the course of this IEP, [Student] will increase overall speech intelligibility by producing /kl blends, and /g/ blends with 80% accuracy at conversation level across 3 consecutive sessions.

- 12/20/18 - He is able to produce /sp/, /sm/, /st/ and /sn/ blends with 100% accuracy independently at sentence level, /sw/ blends at word level with max written cues, mod to max verbal cues and models-50%.

Goal 3 - Articulation/Phonology - During the duration of this IEP, [Student] will increase overall speech intelligibility by producing the following phonemes /l/, /r/, /j/, /sh/, and /th/ in all positions of words at sentence level with 80% accuracy across 3 consecutive sessions.

- 12/20/18 - /sh/ in all positions of words at conversation level-92%, /l/ in the initial position of words at sentence level following initial verbal prompt-85%, /l/ in the medial position of words in words at sentence level independently with min verbal cues-80%, /l/ blends at word level in imitation with max written cues, verbal cues and occasional placement cues for /l/ phoneme-90%. Continue with goal.

Accommodations Provided:

- Teacher Provided Notes (All Areas)
- Read Tests to Student - (Language Arts, Math, Science, Social Studies)
- Preferential Seating- (All Areas)
- Adjustments for Speech/intelligibility/fluency- (All Areas)
- Directions Given in a Variety of ways - (All Areas)
- Give Oral Cues/Prompts - (All Areas)

- Repeated Review and Drill - (All Areas)
- Check often for Understanding/Review- (All Areas)
- Frequent eye contact/proximity control - (Language Arts, Math)
- Extended time for Oral Response- (All Areas)

- District agreed with Parent's request that the Student only receive speech services for 60 minutes per week and personal management for 150 minutes per week in the special education classroom through the 1st quarter of school year 2018-19.

- District provided a listening system for the Student in the classroom to enhance the teacher's voice over the classroom noise.

- Student was placed in the classroom near the teacher.

- Student was placed in the classroom away from auditory distractions (e.g. windows facing playground or near hallway).

- Use of a compensatory strategies including, but not limited to: rephrasing oral material (avoid auditory fatigue); summarizing what was read; visual aids from lessons; directions in a variety of ways; vocabulary words sent home.

45. Testing was delayed because the FM system was not received until late October.

46. The IEP team reviewed the evaluation on 12/3/18.

47. Medlen completed a CELF-4, OWLS and TAPS. These tests showed that Student was within average range or normal. Medlen determined that Student made appropriate progress on his IEP goals for articulation. Medlin described Student's progress as moderate.

48. Marlatt was a member of the IEP team when the report was reviewed on 12/3/18. The report included the Kaufman Test of Educational Achievement Third Edition (KTEA) – an IQ test. The KTEA indicated that Student's risk for dyslexia was in the very high range. Marlatt did not discuss this with the IEP team.

49. The District failed to have its early childhood education teachers sufficiently trained to screen for and identify dyslexia.

50. Howell had an overview of dyslexia in August 2018 for her in-service training.

51. Howell began working with Student in September 2018. She works in the cross categorical classroom, which gives students additional assistance in math, reading, and writing.

52. Student had an IQ score of 95⁵ or in the average range. Howell’s assessment of Student’s reading ability was that he had very low scores that did not reflect the performance of a student who had an average IQ. Student scored in the bottom 0.1 percentile in word recognition fluency. On the KTEA, Student had a dyslexia index score of 67, which is in the 1st percentile. This indicated that his risk for dyslexia was in the very high range.

53. Since the 2018-2019 school year, the District has had a dyslexia coordinator.

54. Howell had the dyslexia coordinator review Student’s scores.

55. Howell stated that she did the present levels of the IEP on December 17, 2018—“And the basic reading portion was actually done by our dyslexia coordinator. She came in and gave [Student] like a pretest with the Sonday system that we were going to be utilizing.” McCaleb wrote the basic reading goals.

56. Masterson said that the District just screens for dyslexia and then it is up to the parent to obtain a medical diagnosis if desired.

57. Student’s Kaufman test in the fall of 2018 had a standard score of 64 for written expression subtest. “On the essay, [Student} wrote nine words using the entire five-minute writing time. His essay was made up of letters put together but making no actual words. He demonstrated difficulty with writing simple words, making sentences, and overall development of the topic.” In contrast, his IEP progress goal for written expression in May 2018 stated “[Student] is able to write a sentence about a picture using correct grammar, describe the context, and use rules of capitalization and punctuation with the following accuracy percentages.”

58. Parent again asked for a 1:1 paraprofessional. The District again denied the request.

59. Student’s IEP goals, progress made, and accommodations for the IEP that was effective 12/17/18 through 12/16/19 according to the District included:

⁵ McBride’s testing placed Student’s IQ at 97—still in the average range.

Goal 1 - Basic Reading - When presented with phonological awareness tasks, [Student] will increase his ability to blend phonemes in one-syllable words from a baseline of 22% to 80% accuracy.

- 03/07/19 - [Student] is able to decipher the beginning sound of a word with 97% accuracy. He is able to tell you the ending sound of a word with 52% accuracy. He is blending together phonemes into words with 30% accuracy.
- 05/15/19 - [Student] is able to decipher the beginning sound of a word with 99% accuracy. He is able to tell you the ending sound of the word with 80% accuracy. He is blending together phonemes into words with 36% accuracy.

Goal 2 - Basic Reading - During the course of this IEP, [Student] will increase his ability to read CV and CVC words to 80% accuracy from a baseline of 20% accuracy.

- 03/07/19 - [Student] is reading CV and CVC words with 43% accuracy this quarter as measured by the Sonday system.
- 05/16/19 - [Student] has successfully completed the first mastery check of the Sonday system. He is currently at a 65% on reading CV and CVC words on the second mastery check point of the Sonday system. Goal 3 - Articulation/Phonology - During the course of this IEP, [Student] will increase overall speech intelligibility by producing /s/ blends, /kl/ blends and /g/ blends with 80% accuracy at conversation level across 3 consecutive sessions.
- 03/07/19 - /kl/ and /g/ blends at word level-90% , /k/ and /g/ blends at sentence level when working on /l/ blends-82%.
- 05/16/19 - He has maintained his ability to produce /kl/ and /gl/ blends at sentence level with 80% accuracy.

Goal 4 - Articulation/Phonology - During the duration of this IEP, [Student] will increase overall speech intelligibility by producing the following phonemes /r/, /l/, /j/, /sh/, and /th/ in all positions of words at sentence level with 80% accuracy across 3 consecutive sessions.

- 03/07/19 - /r/ and /l/ blends in the initial and medial position at sentence level independently-82% across 1 session, most difficulty continues to be in the medial position of words. //r/ in the final position at word level with mod verbal cues and max visual cues from mirror-100%. /sh/ at conversation level-100% across 3 sessions-goal met for /sh/, /th/ initial position at word level in imitation with min verbal and min visual cues- 80%. /th/ initial position at phrase level in imitation with min verbal and max visual cues 70%./th/ medial position at word level in imitation with mod verbal cues and max visual cues-67%. /th/ final position at word level in imitation with max visual cues and min verbal cues-100%.
- 05/16/19 - Goal Met for /sh/ at conversation level, /r/ all positions of words at sentence level independently with min to mod verbal cues-90- 100%. /r/ in all position of words at sentence level with multiple /r/ words in imitation with min to mod verbal cues-

90%. However, performance is variable due to attention. /th/ in all position of words at word level in imitation with mod verbal cues and visual cues from mirror- 100%.

Accommodations Provided:

- Provide home set of textbooks/materials currently being used- (All Areas)
 - Provide Study Guides to Student- (All Areas)
 - Read Test to Student- (All Areas except Reading)
 - Use FM system in Classroom- (All Areas)
 - Preferential Seating - (All Areas)
 - Adjustments for Speech/intelligibility/fluency- (All Areas)
 - Directions Given in a Variety of ways - (All Areas)
 - Give Oral Cues/Prompts - (All Areas)
 - Repeated Review and Drill- (All Areas)
 - Check often for Understanding/Review- (All Areas)
 - Frequent eye contact/proximity control - (All Areas)
 - Extended time for Oral Response - (All Areas)
 - Student was placed in the classroom away from auditory distractions (e.g. windows facing playground or near hallway).
-
- Use of a compensatory strategies including, but not limited to: rephrasing oral material (avoid auditory fatigue); summarizing what was read; visual aids from lessons; directions in a variety of ways; vocabulary words sent home.

60. Howell started to use the Souday system (a dyslexia Orton-Gillingham) approach beginning in January 2019 as part of Student’s IEP. Tr. at 105. “We have not continued the Souday system since the end of last year. We had another IEP meeting right at the beginning of this year and things changed. But while he was using it, he was doing really well. Like he was progressing through it. I think had we stuck with it, I think we would have continued to progress.” *Id.* As to this year, “...he had an IEP in August of this year, and it was determined—the District had Take Flight at this point, and so they decided to do Take Flight. And we changed his minutes to—they’re now push-in minutes. And, really, the Souday program is a one-on-one, need-to-be-pulled-out program.” *Id.* at 106.

61. The Souday system is very individualized with different components for mastery and progress. Howell thinks Student’s goals and progress were appropriate and molded for Student’s dyslexia at that time. Student made great progress on the Souday system.

62. After Parent had filed an earlier due process complaint, the District had a neuropsychologist evaluate Student.

63. Beginning in August 2019, McBride conducted a neuropsychological evaluation of Student. This evaluation was completed on September 9, 2019. McBride used a cross battery approach in finding the hypotheses and problems and determining the appropriate tests that can measure and describe whether a problem exists. Her testing consisted of classroom evaluation, reviewing other testing that had already been done, and performing additional testing and assessments as she determined were necessary.

64. Student is a passive learner, fidgety, and distracted. He mostly goes with the flow and follows along because he doesn't always know what he is supposed to be doing. Student had difficulty visually scanning and tracking. Student is able to write, he has difficulty with left-right and with directions. He had a strength in visuospatial skills. He mixes up sounds, and McBride agreed that Student has a central processing disorder. Student struggles with phonological segmentation and manipulation, which is part of dyslexia. He did very well with working memory and long-term memory, though lower with interference, except when it involved letters and numbers. Student places learned information into a very broad cognitive schema, which makes it difficult for him to learn. McBride also looked at executive functions and found Student to have a slower processing speed than his peers.

65. McBride found Student's attention lacking – only being on task about 68% of the time. Student displayed all of the criteria for attention deficit inattentive type disorder. She concluded Student has severe dyslexia. Student has difficulty being able to “take that information and generalize it to another situation.” Tr. at 269. If you took a topic and generalized the information and put the concepts in an academic-type setting, “he would start to shut down, *because it would be a totally---a totally traumatic thing for him.*” *Id.* at 270. “[W]hen

it comes to things that are academic, learning-type things, he is—he's lost hope. He's done so poorly a lot of the time that he doesn't have any confidence anymore.” Id. (Emphasis added.)

66. At the same time, Student is very smart with a high visual spatial index. He is capable and can learn but “*We've just got to tap it, and finding a way to do that is really difficult.” Id. at 271-72. (Emphasis added.)*

67. McBride did the academics last and when she brought it in and said they were going to read, “the kid melted. He just withered because---he said, I can't read. And I said, but, you know, we've been together all week and I haven't done anything that would hurt you. And, I said, I just need to know so I can help you. *And he said, okay. And he tried. He did his best. But he's—he's just losing hope, because he's struggling so much.” Id. at 272-73. (Emphasis added.)* Student couldn't spell his name correctly. He reversed letters within the words and did not punctuate or capitalize consistently.

68. In math, Student did better. He is understanding things in class, but he does not know math facts and therefore struggles. Student “is starting to understand that he cannot keep up with his peers; that he is different than his peers. And that's going to cause him some trouble. He's going to have self-esteem problems, if we don't do something to give him success at school.” *Id. at 274.*

69. Student has dual dyslexia or severe dyslexia compounded by the auditory processing disorder because not only can he not manipulate the sounds, he has difficulty perceiving the sounds and then he has ADD and is unmedicated. His dyslexia is dysphonetic (affecting his ability to manipulate sounds, take them apart, switch them out and replace them) and dyseidetic (whole word dyslexia). Student needs phonemic awareness training and manipulation and sight words. He needs visual tracking.

70. Other Health Impairment is the best category for an educational diagnosis for Student at the present time, with ADD, dyslexia, and auditory processing.

71. Student will not be at grade level because of his significant disabilities.

72. According to McBride, Student needs to read with others, use books on tape, and then intensively work on reading and writing ability.

73. McBride testified that the intensive evaluation did not occur earlier because they take a long time and do not determine eligibility. *“The only reason we do them is when we see a child that has some soft neurological signs. Like he was under five pounds when he was born. He had hypoglycemia. He was in the hospital for 30 days after he was born. Those are all things that make you go, hum, I wonder. And a lot of times if they qualify anyway, everything works. You know, the things that we try are—we try it; and if it works, we go with it. Because it’s not a—it’s not an exact science. But when we try for a couple years and things aren’t working, then we sometimes do things so that we can try to pinpoint it better.”* Tr. at 287 (Emphasis added.)

74. Student had all of the components of soft neurological signs described by McBride and was in the District for two years of kindergarten, 1st grade, and 2nd grade before the District gave him an intensive evaluation that occurred at the beginning of his 3rd grade year. The District knew at least by kindergarten, that Student was a child who experienced difficulties at birth that could lead to the need for a more intensive evaluation.

75. In describing when McBride gets involved: “And if they see—well, a couple ways they call me. If they see a student that doesn’t qualify and we’re trying to figure out why, then sometimes I will come in and do this, if there are soft neurological signs. Or if they qualified and they’re not making progress, then they will call me in to do this so we can say, oh, what do we need to pinpoint exactly, which is kind of the case with this one. So he’s making progress, but not as fast as we’d like him to make progress.” *Id.* at 288.

76. McBride’s opinion was that Student’s goals were appropriate and they were reasonably calculated to enable Student to make appropriate progress in light of his circumstances.

77. McBride described Student's ability in this way: "Well when you start to learn, your ability as a child, you start with your listening ability, that's the first thing, and speaking ability. And then you start reading, and then the progression is on to writing. So [Student] has kind of stopped in that first part. He's not gone on to the reading and writing part very well. He's struggling with that part. But the other part, the listening and the com—or the responding, he does really well with." Tr. at 310.

78. McBride said that Student's progress is best measured by his classroom work.

79. Parent would like to see Student have more intensive Take Flight education.

80. Beginning with the 2018-2019 school year, DESE required dyslexia screenings and in-service training for teachers. Section 167.950.⁶ Section 633.420 defines dyslexia as:

1. For the purposes of this section, the term "**dyslexia**" means a disorder that is neurological in origin, characterized by difficulties with accurate and fluent word recognition, and poor spelling and decoding abilities that typically result from a deficit in the phonological component of language, often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction, and of which secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge. Nothing in this section shall prohibit a district from assessing Students for dyslexia and offering Students specialized reading instruction if a determination is made that a Student suffers from dyslexia. Unless required by federal law, nothing in this definition shall require a Student with dyslexia to be automatically determined eligible as a Student with a disability. Nothing in this definition shall require a Student with dyslexia to obtain an individualized education program (IEP) unless the Student has otherwise met the federal conditions necessary.

81. Springfield did not start screening for dyslexia until the 2019-2020 school year.

Conclusions of Law

This Commission has jurisdiction over this case. Section 162.961. The burden of proof is on the party seeking relief, in this case Parent. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

⁶ Statutory references are to RSMo 2016 unless otherwise noted.

Parent must prove her case by a preponderance of the evidence. *Tate v. Dept. of Social Services*, 18 S.W.3d 3, 8 (Mo. App., E.D. 2000). A preponderance of the evidence is “evidence which as a whole shows the fact to be proved [is] more probable than not.” *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D., 2000).

Credibility

We must judge the credibility of witnesses, as well as the weight and value of the evidence. *Faenger v. Petty*, 441 S.W.3d 199, 204 (Mo. App., W.D., 2014). We have the discretion to believe all, part, or none of the testimony of any witness. *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo. App. W.D., 2001). Our Findings of Fact reflect our credibility determination.

Dismissal of Claims

Parent requests attorney fees. Attorney fees are not within the authority of this Commission to award under the IDEA. A court, in its discretion, may award reasonable attorney fees to the prevailing party, 20 U.S.C. § 1415 (i)(3)(B)(i), but an administrative tribunal may not. Therefore, to the extent that Parent seeks attorney fees and expenses in bringing an IDEA claim, those requests are denied.

Requiring Individualized Training for all Student’s Teachers

Parent withdrew the relief requested in her complaint to have individualized training for all Student’s teachers. Therefore, we do not consider the request.

VI. IDEA Overview

Under the IDEA, all children with disabilities are entitled to FAPE designed to meet their unique needs. 20 U.S.C. §1400(d)(1)(A) and 34 C.F.R. §300.1(a). Missouri’s State Plan for Special Education (2019) (State Plan) generally defines FAPE as regular and specialized special education and related services provided at public expense, under public supervision and direction without charge to the parents that meet the educational standards of the state educational agency

and are provided in conformity with the student’s IEP. *State Plan*, Regulation I, §, page 3.⁷ The IDEA does not prescribe any substantive standard regarding the level of education a disabled child should be accorded. *Board of Education of Hendrick Hudson Central School District, Westchester County, et al. v. Rowley*, 458 U.S. 176 (1982). It does require the school district to “provide a disabled child with such special education and related services ‘in conformity with the [child’s] individual education program.’” *Andrew v. Douglas County School District RE-1*, 137 S. Ct. 988, 994 (2017).

Accordingly, it is well established that “The IEP is ‘the centerpiece of the statute’s education delivery system for disabled children.’” *Id.*, quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988). An IEP is a specialized course of instruction developed for each disabled Student, taking into account the “unique needs” of a particular child. *Id.*, citing *Rowley*, 458 U.S. at 181. The IEP is not required to maximize the educational benefit to the child, but must be “reasonable” and “not ideal.” *Rowley*, 458 U.S. at 199 and *Andrew*, 137 S. Ct. at 999.

The IDEA states that, to the maximum extent appropriate, children with disabilities must be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur “only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. § 1412 (a)(5)(A). This concept, known as the “least restrictive environment” (LRE), is the vehicle through which Congress sought to bring children with disabilities into the mainstream of the public school system. See *Mark and Ruth A. v. Grant Wood Area Education Agency*, 795 F.2d 52, 54 (8th Cir. 1986); *Rowley*, 458 U.S. at 189.

The concept of educating students in the LRE reflects a “strong preference” that disabled children attend regular classes with non-disabled children. *T.F. v. Special Sch. Dist. of St. Louis*

⁷ See also, 20 U.S.C. § 1401(9).

Cnty., 449 F.3d 816, 820 (8th Cir. 2006). But the mainstreaming preference of the IDEA is not absolute; 20 U.S.C. § 1412(a)(5)(A) “calls for educating children with disabilities together with children who are not disabled ‘[t]o the maximum extent appropriate.’” *C.B. ex rel. B.B. v. Special School Dist. No. 1*, 636 F.3d 981, 991 (8th Cir. 2011).

Children such as Student must have an IEP that provides an educational program “appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” *Endrew*, 137 S. Ct. at 1000. “To meet its substantive obligations under the IDEA” an IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew*, 137 S.C. at 999. This is not a bright-line rule and it “requires a prospective judgment by school officials” that is a “fact-intensive exercise” incorporating information from both school officials and input from the child’s parents. *Id.*, citing *Rowley*, 458 U.S. at 207.

However, an absence of the court providing a “bright-line rule” is not “an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review” and such deference is “based on the application of expertise and the exercise of judgment by school authorities” and “[a] reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decision that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Endrew*, 137 U.S. at 1001-1002, citing, in part, *Rowley*, 458 U.S., at 206. Nevertheless, this does not negate a hearing officer’s duty to weigh the credibility of the witnesses and consider the impact of the testimony of expert witnesses. *Bd. of Educ. of Montgomery County v. S.G.*, 2006 WL 544529 (D. Md. Mar. 6, 2006).

Educational authorities must identify and evaluate disabled children, develop an IEP for each one, and review every IEP at least once a year. 20 U.S.C. §§1414(a)-(c), (d)(2) and (4). They must also re-evaluate a Student every three years. 20 U.S.C. §1414(a)(2)(B)(ii); 34 C.F.R.

§300.303(b)(2). Each IEP must include an assessment of the child’s current educational performance, articulate measurable educational goals, and specify the nature of the special services that the school will provide. 20 U.S.C. §1414(d)(1)(A).

The primary mechanism for delivering a FAPE is the development of a detailed instruction plan, IEP, for each child classified as disabled. 20 U.S.C. §1401(18). An IEP consists of, inter alia, a specific statement of a Student's present abilities, goals for improvement, services designed to meet those goals, and a timetable for reaching the goals via the services. *Id.* §1401(a)(20). The creation of an administrative structure capable of producing IEPs is a requisite to receiving IDEA funds. *Id.* §1414(a)(5). To the extent possible, however, a school must “mainstream” disabled Students – that is, instruct them in a regular, not special, education setting. *Id.* § 1412(5).

Issue of the Case

Failure to Develop IEP during 2017-2018 and 2018-2019 School Years

The District argues, and Parent does not dispute, that the relevant time period in this case is September 17, 2017 through June 30, 2019.

Parent argues that the District denied Student FAPE by failing to create and implement IEPs that were reasonably calculated to provide meaningful benefit in light of Student’s unique circumstances. Parent specifically argues that Student demonstrated signs of dyslexia, and the District failed to create goals that addressed those needs, failed to program for those needs, and failed to evaluate Student to determine the extent and specificity of his needs.

In the November 17, 2017 IEP, Student’s disability changed from Specific Learning Disabilities (Primary) to Other Health Impairment (Primary). Other Health Impairment is defined as:

Other Health Impairment: Other Health Impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the

educational environment that is due to chronic or acute health problems, such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette Syndrome, and adversely affects a Student's educational performance.

A Student displays a Health Impairment when:

(1) A health impairment has been diagnosed by a licensed physician, licensed psychologist, licensed professional counselor, licensed clinical social worker, or school psychologist, and

(2) The health impairment adversely affects the Student's educational performance.

State Plan, Regulation III – Identification and Evaluation, p. 27.

Progress on Goals

The District argues that Student made progress on the goals that were set by the IEP team, and several witnesses testified to this. But Parent argues that by failing to address Student's dyslexia, they either were not appropriate goals or other additional goals were needed to afford Student FAPE. Goals for Student were centered around articulation. We will analyze the goals in the following IEPs or amendments to IEPs.

September 17, 2017 to November 22, 2017

For these two months, Student's instruction was under the November 22, 2016 IEP. He was in kindergarten at the time of the IEP meeting, and his disability was listed as Specific Learning Disabilities (Primary). We have reviewed this IEP and find the goals were reasonably calculated to provide meaningful benefit in light of Student's unique circumstances.

November 17, 2017 to May 14, 2018

For this period, Student's instruction was under the November 17, 2017 IEP. He was in the 1st grade at the time of the IEP meeting, and his disability was listed as Other Health Impairment (Primary). We have reviewed this IEP and find the goals were reasonably calculated to provide meaningful benefit in light of Student's unique circumstances.

May 14, 2018 to August 27, 2018

On May 14, 2018, Student's IEP was amended to include extended school year, additional medical information, and § 504 accommodations.

Parent provided evidence that despite Student's average IQ, he is reading, spelling, and writing at three grade levels below his grade. His evaluation scores are very low in the area of reading.

The District argued that it was providing the accommodations that were suggested in Jaycox's evaluation report. During Student's 2nd grade year, while there was a delay in getting the equipment from the Missouri School for the Deaf, the District used an FM system with Student. He was seated at the front table near the teacher and approximately eight feet from the board. He was seated away from auditory distractions like windows and hallways. Marlatt testified that she provided Student with additional information, rephrased her oral material, summarized what she had read, provided visual aids for lessons, gave directions in a variety of ways, provided vocabulary words, and sent those words home. But those vocabulary words were much harder than the consonant words referenced in Student's IEP. Marlatt did not believe Student could read them, but they were words that were in the story Marlatt read in a particular week.

We acknowledge that the District provided these accommodations, but for the reasons set forth below, we find that the District did not provide Student with FAPE because it should have addressed obvious signs of Student's dyslexia. Student had exceptionally slow progress. While there is some progress with Student, the question becomes whether Student experienced meaningful progress. We view the slow progress made by Student to be an indicator that the IEP was not reasonably calculated to produce meaningful progress. *Questions and Answers on U.S. Supreme Court Case Decision, Andrew F. v. Douglas County Sch. Dist.* 71 IDELR 68 (EDU

2017). The fact that Student made some progress may relate to the amount of services needed to remedy. *See Samberg v. Utica Cmty Schs.*, 73 IDELR 88 (6th Cir. 2018).

Parent notes that the Kaufman evaluation report that was provided in December of 2018, states:

The Written Expression subtest requires at grades 1 and higher, examinees write sentences from dictation, add capitalization and punctuation, complete or combine sentences, and write an essay. [Student's] standard score of 64 places him in the low category. He was able to write letters of the alphabet when asked, though he reversed several of the letters including the letters: s, f, and r, however he was unable to write his last name correctly when asked. He was also able to copy down a work he was looking at. He had difficulty with filling in ending punctuation, adding in capitalization at the beginning of a sentence, and writing a question to go along with the story. He was unable to choose one grammatically correct word needed in order to make one well written sentence, and exhibited difficulty combining multiple thoughts into one well written sentence. On the essay, [Student] wrote nine words, using the entire 5 minute writing time. His essay was made up of letters put together but making no actually [sic] words. He demonstrated difficulty with writing simple words, making sentences and overall development of the topic. [Student's] written language composite score of 64 indicates an overall significant weakness in the area of written expression.

Summary:

The testing session was deemed appropriately valid for obtaining an accurate representation of [Student's] current level of academic achievement. [Student's] overall scores on the KTEA-3 ranged from the average to the very low range.

The KTEA-3 Dyslexia Index score can enhance the understanding [Student's] reading development and need for a more intensive intervention approach. The Dyslexia Index score is comprised of three subtests: Nonsense Word Decoding, Spelling, and Word Recognition Fluency. [Student] obtained a Dyslexia Index score of 67 (1st percentile), which indicates his risk for dyslexia is in the Very High range.

Joint Ex. 24 at 290. The 1st percentile means that 99.9% of the people who have taken this assessment for this grade or this age scored better than he did.

Parent used these findings to dispute the determination in May 2018, that Student was making progress in his goals. One goal was: “[Student] will write a sentence about a picture by demonstrating correct grammar to describe the context and using rules of capitalization and punctuation from a baseline of 0 percent to 80 percent.” Joint Ex. 17 at 195. The District had noted that Student met this goal with 54% accuracy. While not contesting the credibility of the District’s staff or records, it is difficult to accept that Student met this goal – even half of the time – when six and a half months later his skills were as described in the evaluation.

Parent testified that she had been discussing the possibility of dyslexia with District staff since Student was in kindergarten.

Q: Did you ever mention the possibility of dyslexia?

A: I spoke to Mrs. Pennington his kindergarten year about dyslexia and how it was very likely that he did have dyslexia, because he would oftentimes on assignments or playing or with us drawing, write things completely upside down, backwards, and then reverse to where you could reflect it in the mirror. And that was just how he did it.

Tr. at 143. Parent disagreed that Student had met several of the IEP goals, testifying that Student “is still struggling with some of the letters in his alphabet.” *Id.* at 180. She said that, even at the time of the hearing, when presented with a printed letter, Student cannot always name the letter and sometimes must start listing the letters from the beginning. The educational services used by the District failed to address Student’s deficits. *I.S. Sepiol v. School Town of Munster*, 64 IDELR 40 (N.D. Indiana 9/10/14), (Indiana district denied FAPE when it used educational methodologies that did not address his deficit of severe dyslexia).

We find that the goals in this IEP were not reasonably calculated to provide meaningful benefit in light of Student’s unique circumstances.

August 28, 2018 to November 13, 2018

On August 27, 2018, Student’s IEP was amended in the areas of present level of academic achievement and functional performance, annual goals, services summary, and

placement considerations and decision. It was noted that the team would revisit Student's progress after October 12, 2018.

The District argues that the amendments were made because Parent asked to discontinue some of the Student's special education services.

8/27/18: Parent requested that [Student] only receive speech services for 60 min./week and personal management for 150 min./week in the special education classroom. The rest of the team felt that [Student] should receive more specially designed instruction in the special education classroom, but agree to the parent's request through the 1st quarter of the current school year. The team will then consider progress/academic struggles at the end of the quarter. A new goal for working memory was added to the IEP. Other academic goals will be on hold until after the review of progress and a decision is made regarding services (after 10/12/18)[.]

Joint Ex. 20 at 230. The District appears to blame any regression on Parent's decision to change his services. But many of the goals were repeated from the past. We do not conclude that the District was unsympathetic to Student or that the District did not try to accommodate and work with Student. The number of changes to the IEP indicates the District's concern, and it should have further alerted the District that it was not meeting the needs of Student.

The decision to carry over annual goals from one IEP to the next is not ideal. It may or may not indicate that FAPE has been denied. *F.L. ex rel. R.C.L. v. Board of Educ. of the Great Neck Union Free Sch. Dist.*, 72 IDELR 232 (2d Cir. 2018). Here, while Student's disability appears to significantly affect him, he also has a normal IQ and the memory ability to learn and progress. Student made little progress in reading until the Souday system was utilized. Continuing ineffective programs despite a lack of progress from kindergarten to 3rd grade on reading can be a denial of FAPE. *Department of Educ., State of Hawaii*, 47 IDELR 238 (SEA HI 2007). It should have been reasonably obvious to the District that Student likely has the ability to read, but has been unable to read due to his disability.

Again, Parent argues that due to the lack of focus on Student's dyslexia, the services the IEP provided were inadequate. Parent testified that she was not seeking a lesser level of special education services, but something different because what was being provided was not working for Student. She said she wanted to "try him in the general education classroom[.]" Tr. at 205. We do not fault Parent for wanting to try out alternative methods when Student's unique circumstances were not being met with the educational tools being used at that time.

We find that the goals in this IEP were not reasonably calculated to provide meaningful benefit in light of Student's unique circumstances. Student was denied FAPE.

November 13, 2018 to December 17, 2018

For this period, Student was in the 2nd grade. His disability was listed as Other Health Impairment (Primary). We find that the goals in this IEP were not reasonably calculated to provide meaningful benefit in light of Student's unique circumstances. Student was denied FAPE.

December 17, 2018 to December 16, 2019

For this period, Student was in the 2nd grade at the time of the IEP meeting, and he was instructed under this IEP. His disability was listed as Other Health Impairment (Primary).

Marlatt testified that one of Student's Goal #2 (increase his ability to read consonant vowel and consonant vowel consonant words) would not be a goal for a typical 2nd grader, but instead be the goals for a student in kindergarten or 1st grade. This indicates how far behind Student had fallen.

After receiving the Kaufman evaluation report, the District consulted with a dyslexia coordinator. The IEP team added basic reading goals written by McCaleb and started the Sunday system, a teaching program for dyslexia. When the District finally implemented the Sunday system in January 2019, Student improved dramatically:

Skill	Accuracy at beginning of instruction	Accuracy at end of instruction
Beginning Sounds of Words	97%	99%
Ending Sounds of Words	52%	80%
Blending Phonemes	30%	36%
First Level of Sonday Program	43%	Mastered
Second Level of Sonday Program		65%

Tr. at 116-17.

McBride testified that the four goals in this IEP were “really – really good” and “exactly what he needed for his dual dyslexia.” *Id.* at 295.

Because the District had begun to address one of Student’s major issues, we find that the goals in this IEP were reasonably calculated to provide meaningful benefit in light of Student’s unique circumstances.

Change of Law

Parent raised the issue of DESE’s requirement for dyslexia screening, but she does not specifically argue its relevance. This may also be related to Parent’s request regarding teacher training, which we have dismissed above. We do not address this issue.

Summary

Parent alleged that the District failed to provide Student with FAPE under the IDEA because the District failed to develop and implement an IEP that was reasonably calculated to provide Student appropriate progress in light of Student’s unique circumstances for 2017-2018 and 2018-2019.

We conclude that the District provided FAPE in 2017-2018 and from December 16, 2018 through end of the 2018-2019 school year. We agree with Parent that the District failed to provide FAPE as to the time period for and IEPs from August 28, 2018-November 13, 2018, and November 13, 2018-December 17, 2018. We order the District to provide a compensatory amount of 45 hours of intensive education for Student’s reading skills with a program designed

to meet Student's needs that takes into account Student's severe dyslexia and the results of McBride's neuropsychological evaluation. We further order the District to convene an IEP meeting to determine how the compensatory hours can be provided and, if it has not already done so, to review McBride's evaluation and accordingly develop a new IEP with new goals that incorporate McBride's recommendations as to Student's unique needs.

SO ORDERED on November 26, 2019.

AUDREY HANSON MCINTOSH
Commissioner

Appeal Procedure

Please take notice that this is a final decision of the Administrative Hearing Commission and you have a right to request review of this decision. Per §162.962, when a review of this decision is sought, either party may appeal as follows:

- (1) The court shall hear the case without a jury and shall:
 - (a) Receive the records of the administrative proceedings;
 - (b) Hear additional evidence at the request of a party; and
 - (c) Grant the relief that the court determines to be appropriate, basing its decision on the preponderance of the evidence;
- (2) Appeals may be taken from the judgment of the court as in other civil cases;
- (3) Judicial review of the administrative hearing commission's decision may be instituted by filing a petition in a state or federal court of competent jurisdiction. Appeals to state court shall be filed within forty-five days after the receipt of the notice of the agency's final decision;
- (4) Except when provided otherwise within this chapter or Part 300 of Title 34 of the Code of Federal Regulations, the provisions of chapter 536 are applicable to special education due process hearings and appeal of same;

(5) When a commissioner renders a final decision, such decision shall not be amended or modified by the commissioner or administrative hearing commission.

The right to appeal is also addressed in 34 C.F.R. §300.516.