

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

Docket No.: 17-004625

**Z.A. o/b/o A.A.,
Petitioner**

Case No.: 17-00031

v

Agency: Education

**Carman-Ainsworth Community Schools,
Genesee Intermediate School District,
Respondent**

Case Type: ED Sp Ed Regular

Filing Type: Appeal

**Issued and entered
this 9th day of August, 2017
by: Kandra Robbins
Administrative Law Judge**

DECISION AND ORDER

PROCEDURAL HISTORY

This matter concerns a due process hearing request/complaint under the Individuals with Disabilities Education Act (IDEA) 20 USC 1400 *et seq.* On March 6, 2017, Petitioner filed a due process request/complaint with the Michigan Department of Education on behalf of her daughter (Student)¹. It was forwarded to the Michigan Administrative Hearing System and assigned to Administrative Law Judge (ALJ) Kandra Robbins.

A Prehearing Conference was convened on March 21, 2017 during which the hearing was set for two days in May.

On April 19, 2017, Petitioner filed a request to adjourn the hearing. On April 27, 2017, a second Prehearing Conference was convened during which the request for adjournment was granted. On May 11, 2017, a third Prehearing Conference was held during which the parties agreed to new hearing dates of July 24 and July 25, 2017.

The hearing was convened on July 24, 2017 at the Genesee Intermediate School District Offices in Flint, Michigan. The Petitioner appeared on her own behalf. The Respondents were represented by Steve Polega, Director of Special Services Administration, Attorney Lorie Steinhauer, and Attorney John Kava.

¹ To protect the privacy of the minor child, Student is substituted for the child's name.

The following exhibits were offered as joint exhibits and admitted into evidence:

1. Joint Exhibit 1 is an Individualized Education Plan for Student dated February 20, 2017.
2. Joint Exhibit 2 is an Individualized Education Plan for Student, dated February 2, 2016.
3. Joint Exhibit 3 is an Initial Evaluation for Student completed by Meredith Reiken, SLP, dated December 8, 2016.
4. Joint Exhibit 4 is a Student Accident Report Form, dated January 6, 2017.
5. Joint Exhibit 5 is a letter from Petitioner, dated December 16, 2016.

The following exhibits were offered by Petitioner and admitted into evidence unless otherwise indicated:

1. Petitioner Exhibit 1 is a letter from Dr. Ramirez, M.D., dated March 24, 2017.
2. Petitioner Exhibit 2 is a letter from Petitioner received by the District on December 13, 2016.
3. Petitioner Exhibit 3 is a letter from Petitioner, dated December 7, 2016.
4. Petitioner Exhibit 4 is a letter from Petitioner received by the District on November 17, 2016.
5. Petitioner Exhibit 5 is a letter from Petitioner received by the District on November 28, 2016.
6. Petitioner Exhibit 6 is a memorandum completed by Dana D'Andrea, dated December 13, 2016.
7. Petitioner Exhibit 7 was admitted as part of Joint Exhibit 4.
8. Petitioner Exhibit 8 is a Student Accident Report Form, dated January 6, 2017 and given to Petitioner on January 11, 2017.
9. Petitioner Exhibit 9 is an Initial Evaluation for Student admitted as Joint Exhibit 3.

10. Petitioner Exhibits 10 through 15 were not offered.
11. Petitioner Exhibit 16 is a letter to Petitioner from Principal Paula Kearney, dated April 13, 2017.
12. Petitioner Exhibit 17 is a letter from Petitioner, dated March 20, 2017.
13. Petitioner Exhibit 18 is a letter to Ms. Quinlan from Petitioner, dated January 11, 2017.
14. Petitioner Exhibit 19 was not offered.
15. Petitioner Exhibit 20 is an evaluation completed by Danielle Shapiro, Ph.D., dated May 15, 2017.
16. Petitioner Exhibit 21 is a Brigance Transition Inventory completed in April 2017.
17. Petitioner Exhibit 22 is a Brigance Transition Inventory completed in June 2017.
18. Petitioner Exhibit 23 is a homework sample of Student.
19. Petitioner Exhibit 24 was admitted as Joint Exhibit 2.
20. Petitioner Exhibit 25 was admitted as Joint Exhibit 1.
21. Petitioner Exhibit 27 was not offered.

The following exhibits were offered by Petitioner and were excluded as hearsay:

1. Petitioner Exhibit 26 letter purporting to be from Jenny Salsa, dated July 12, 2017.
2. Petitioner Exhibit 28 is a letter purporting to be from Phyllis Washington, dated July 12, 2017.

The following exhibits were offered by Respondent and admitted into evidence unless otherwise indicated:

1. Respondent's Exhibit A is a Speech and Language Evaluation, dated February 10, 2017.
2. Respondent's Exhibit B is a Speech and Language Observation, dated March 18, 2016.
3. Respondent's Exhibit C is an Occupational Therapy Observation, dated March 16, 2016.
4. Respondent's Exhibit D is a Physical Therapy Report, dated March 16, 2016.
5. Respondent's Exhibit E was not offered
6. Respondent's Exhibit F is a daily attendance profile for 2017.
7. Respondent's Exhibit G through J were not offered.
8. Respondent's Exhibit K is a GISD Speech and language, Occupational Therapy and Physical Therapy Integration plan.
9. Respondent's Exhibit L was not offered.
10. Respondent's Exhibit M is school nurse notes regarding A.A.
11. Respondent's Exhibit N was not offered.

The following individuals testified in this matter:

1. Teneka Ellison, CLS Worker
2. Yamesia Davis, Easter Seals Case Manager
3. Jeanne Quinlan, Retired School Principal
4. Caroline Fechik, Special Education Teacher
5. Stephen Ballew, Special Education Teacher
6. Emily Martin, School Nurse

7. Stephanie Gay-Strawsburg, Speech Language Pathologist
8. Ruth Robinson, Occupational Therapist
9. Carol Casolari, Physical Therapist
10. Steven Polega, Director of Compliance and Special Education
11. Paula Kearney, School Principal
12. Bob Heatherton, Director of Student Support and Special Services

At the conclusion of Petitioner's case, Respondent presented its motion for a directed verdict. The motion was taken under advisement.

ISSUE

1. Should the February 20, 2017 IEP have included direct speech therapy services, physical therapy services, occupational therapy services and a one to one aide for Student to receive a free appropriate public education?
2. Should the February 2, 2016 IEP have included direct speech therapy services, physical therapy services and occupational therapy services and a one to one aide for Student to receive a free appropriate public education?
3. Is the education program in the February 2, 2016 IEP the appropriate least restrictive placement for Student?

APPLICABLE LAW

The Petitioner-parents, as the party challenging the District's determination or implementation of special education and related services, have the burden of proof by a preponderance of the evidence for all claims raised in this matter. *Schaffer v Weast*, 546 US 49; 126 S Ct 528; 163 L Ed 2d 387 (2005); *Doe v Defendant I*, 898 F2d 1186 (CA 6, 1990).

Students protected by the provisions of IDEA are entitled to be appropriately identified, evaluated, placed, and provided a free appropriate public education (FAPE) that includes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 USC 1400(d); 34 CFR 300.1.

In determining whether the District provided a free appropriate public education in the least restrictive environment for the student in this case, it must first be determined whether the District has complied with the procedures set forth in the IDEA in developing the IEP, and second, whether the IEP developed through those procedures was reasonably calculated to enable the student to receive a meaningful educational benefit gauged in relation to his potential. *Rowley*, 458 US at 206-07; *Deal*, 392 F3d at 862.

A district must ensure that the education program is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Student is entitled to have the chance to meet challenging objectives. The U.S. Supreme Court held that to provide FAPE, a district must offer an IEP 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 (U.S. 2017).

The Michigan Administrative Rules for Special Education provide in relevant part:

R. 340.1746. Homebound and hospitalized services

Rule 46. The following homebound and hospitalized services are required:

- (a) Homebound services shall be initiated within 15 school days after verification, by a licensed physician, of a medical impairment which requires the eligible special education student to be confined to the home. Such verification shall indicate the anticipated duration of the required confinement.
- (b) Hospital service shall be provided for eligible special education students who cannot attend school because of hospitalization for a physical or medical impairment. These services shall be initiated when determined medically feasible.
- (c) A special education teacher employed for homebound or hospital services, or for a combination of these services, shall be assigned not more than 12 students at any 1 time.
- (d) Students receiving homebound or hospital services shall receive a minimum of 2 nonconsecutive hours of instruction per week. Related services personnel may supplement, but not substitute for, the teacher's instruction.
- (e) The district in which the hospital is located shall make homebound and hospital services available to eligible students. If the student is hospitalized outside of the district of residence, the district of residence is responsible for delivering services or for contracting with the operating district and making payment for the services

- (f) Homebound and hospitalized services shall not be substituted for special education programs. Instead, the service provider shall endeavor, to the extent appropriate, to present curricular experiences which are being provided in the program where the student is currently enrolled. 1979 AC; 1980 AACS; 1987 AACS; 2002 AACS; 2005 AACS

FINDINGS OF FACT

Based on the entire record in this matter, including the testimony, stipulated facts, and admitted exhibits, the following findings of fact are established:

1. Student is 16 years old. She currently receives special education services as a student with a cognitive impairment. [Jt. Exh. 1]
2. Student has a diagnosis of seizure disorder. She currently is prescribed Depakote and Lamictal. [Jt. Exh. 2]
3. On February 2, 2016, an IEP Team meeting was held to conduct the annual review of Student's IEP. Based on the evidence submitted, it is impossible to determine who participated in the development of this IEP. There are no signatures on the IEP reflecting any attendance. [Jt. Exh. 2]
4. In that IEP, it was noted that as a result of a Due Process Hearing in November 2015, this ALJ had determined that the MoCi program best met Student's needs at the time. [Jt. Exh. 2]
5. The February 2, 2016 IEP indicated that on the STAT-R evaluation administered in January 2016, Student scores indicated growth from her previous assessment. Specifically, career/employment increased to 50% from 40%. In post-secondary education/ training, her score increased to 100% from 50%, Adult life increased from 46% to 69%. The score for community participation decreased from 45% to 36%. The Brigance Comprehensive Inventory of Basic Skills II Test found that Student can read second grade level words with 90% accuracy and third grade level words with 63% accuracy. Student has a significant impairment in all skill areas except leisure and social abilities. [Jt. Exh. 2]
6. On the Wechsler Individual Achievement Test, Student scored well below average range in the areas of word reading, numerical operations, math reasoning, and spelling. [Jt. Exh. 2]
7. Student's full-scale IQ had a standard score of 43. Her general thinking and reasoning skills are in the extremely low range. Based on the Woodcock-

Johnson III Test of Achievement, Student's academic skills fall within the very low range. [Jt. Exh. 2]

8. Also listed in the Present Level of Academic Achievement, it was noted that Student had delays in walking/gait and shoulder posturing. [Jt. Exh. 2]
9. Based on the IEP Team determinations, Student's appropriate educational placement would be the Project CHOICE MoCi classroom operated by Genesee Intermediate School District. [Jt. Exh. 2]
10. The Project CHOICE MoCi classroom follows the Michigan Model Supported Independence Curriculum to address individual needs in functional academics, personal care, social interactions, work habits, and leisure activities. It exposes students to the Common Core Curriculum. [Jt. Exh. 2]
11. The IEP Team determined a number of goals and objectives for Student in the February 2016 IEP. The first goal is a Functional Skills goal specifically that by February 2017, Student will independently read and complete a simple job application neatly and 80% accurately with corrections from staff. This goal is supported by three short-term objectives. The first is that by April 2016, Student will demonstrate that she can complete simple employment applications neatly and correctly with less than 6 suggestions as requested. The second short-term objective is that by June 2016, Student will demonstrate that she can complete simple employment applications neatly and correctly with less than 4 suggestions as requested. The final objective is that by November 2016, student will demonstrate that she can complete simple employment applications neatly and correctly with less than 2 suggestions as requested.
12. The next goal is a Math goal. It is for supported independence based on the Common Core Element SI.L1.2.1b: identify different coins and bills (\$1, \$5, \$10 and \$20) and/or use bills for purchases. Specifically, by February 2017, Student will give the values of groups of US coins, pennies, and nickels, pennies, nickels, and dimes; pennies, nickels, dimes and quarters with no corrections from staff with 80% accuracy through oral and written response. This goal is supported with three short term objectives.
13. The February 2016 IEP provided for nursing services on a consultation basis as needed. [Jt. Exh. 2]
14. There is nothing in the February 2016 IEP indicating that physical therapy or occupational therapy or speech language services were discussed. The

PLAAF reflects concerns in these areas but there are no services listed for any of these areas. [Jt. Exh. 2]

15. About a month after the completion of the February 2016 IEP, a classroom observation was completed by Speech-Language Pathologist Stephanie Gay-Strawsburg. Ms. Gay-Strawsburg observed that Student was social and talking to her peers. She was able to follow multi-step directions and answer yes/no questions. Student demonstrated the ability to answer a variety of "wh" questions and was able to express her needs and wants. [Resp. Exh. B]
16. Based on her observations, Ms. Gay-Strawsburg recommended that speech and language services continue as monitoring as a component of the classroom. [Resp. Exh. B]
17. On March 16, 2016, Ruth Robinson, Occupational Therapist, conducted a classroom observation of Student. Ms. Robinson noted that Student is able to print neatly, copy, both near and far point, and demonstrates a mature grasp on a writing utensil using her right, dominant hand. She is independent in her self-care (may need verbal prompt), dressing and feeding at school. Student can tie her own shoes. Ms. Robinson noted that there were no concerns with strength, coordination or visual perceptual problems as observed. She noted that Student demonstrated full range of motion in both upper extremities. There was not noted sensory concerns. [Resp. Exh. C]
18. On March 16, 2016, Carol Casolari completed an assessment of Student. Ms. Casolari noted that Student could follow simple verbal commands consistently. She was observed to have full active isolated movements in her arms and legs with normal tone. She ambulated with a normal gait pattern and keeps up with her peers when navigating through the hallways. Student independently stood up from the ground in a mature pattern. When given the option, she walked up and down a flight of stairs without a handrail with a reciprocal pattern. She was able to jump up 2 to 3 inches in height, jump forward 24 inches and jump down from a 6-inch-high step to a distance of 2 feet and jump and turn 18- degrees. She stood unsupported on the right or left leg for greater than 10 seconds. She was able to gallop leading with the right foot and skip. She ran in a smooth coordinated manner with a flight phase and was able to start and stop with ease. [Resp. Exh. D]
19. Ms. Casolari stated that Student is functional with her mobility in the school setting. Student is able to access all areas of the school and keeps up with her peers. Consultation occurred with her teacher after the screening to indicate that there were no gross motor concerns at this time. [Resp. Exh. D]

20. This IEP was implemented beginning on February 2, 2016. Student continued under this plan until the end of the 2015/2016 school year.
21. The February 2016 IEP was in place for Student for the beginning of the 2016/2017 school year.
22. Student has only attended school for 17 days during the 2016/2017 school year. The family has been involved in a Truancy matter with the local circuit court.
23. On December 16, 2016, Petitioner met with principal Jeanne Quinlan and Special Education Director Bob Hetherington. Petitioner provided an initial evaluation for Student completed by Meredith Reiken at MaxWell Therapy. Petitioner requested OT and PT evaluations. It was determined that a speech evaluation would be appropriate. [Jt. Eh. 1]
24. On January 6, 2017 at approximately 11:05 a.m., Student rose from her desk to go wash before lunch. Student walked to the bathroom. Ms. Fechik went with the students. While Ms. Fechik was in a bathroom stall, she heard a peer ask Student "Are you ok?". The teacher noticed that Student was off balance. Student was escorted back to the classroom. She was observed to have a slowed expression. Student gave clear answers but appeared sleepy. Student complained that her lower back was in pain. Ms. Fechik called the Transition Center administrator and requested a nurse be sent to the classroom. Ms. Fechik sat Student in a chair with a bucket, monitored for signs of sickness and seizure due to Student throwing up. Student remained monitored in classroom. [Jt. Exh. 4]
25. The school nurse arrived to the classroom at approximately 11:40 a.m. Upon her arrival, she observed Student sitting in a chair. Student appeared pale and had vomited a small amount. Student had no temperature. Student was responsive and appropriate to conversation. Her eyes were noted to be dilated. Nurse assisted Student to another chair, her gait was unsteady. Student was then assisted to a couch where she laid down and fell asleep. She stated that she contacted Petitioner via phone. Petitioner reported that Student has absence seizures that present similar to what was reported. Petitioner did not want to pick Student up but indicated that she would follow-up with Student's neurologist to discuss seizure activity. Petitioner stated that there were no standard precautions but that Student would be sleepy. The nurse reviewed the school's standard seizure protocol and Student's medical history with classroom teacher. [Resp. Exh. M]

26. On February 10, 2017, Ms. Gay-Strawsburg conducted a Speech and Language Evaluation of Student. She determined that Student continues to demonstrate functional language skills such as answering/asking a variety of "wh" questions, appropriate pronoun use, and is able to express her wants and needs effectively. Receptively, Student is able to answer yes/no questions as well as follow multi-step directions. She noted that while Student has scored in the lower percentile in receptive and expressive vocabulary, Student's speech and language skills do not hinder her current educational placement. [Resp. Exh. A]
27. Ms. Gay-Strawsburg recommended that speech and language services remain as consultative component of the classroom. She noted that Student's educational program consists of various language-based activities provided by classroom staff. [Resp. Exh. A]
28. On February 20, 2017, an IEP team meeting was held. The IEP team consisted of the following individuals: Petitioner; Caroline Fechik, special education teacher; Dana D'Andera, Circuit Court Educational Specialist/Consultant; Jeanne Quinlan, Principal, District Representative; Robert Hetheron, Spec. Education Director; Yamesia Davis, Case Manager, Easter Seals; Lori Steinhauer, School Attorney; and three individuals whose signatures are illegible. [Jt. Exh. 1]
29. In the IEP, it was noted that since the February 2016 IEP was implemented, Student only attended school 56% of the time. She made some progress toward her goals but insufficient progress to achieve and maintain her goals and objectives. [Jt. Exh. 1]
30. The goals and objectives in the 2017 IEP are the same goals and objectives from the 2016 IEP. [Jt. Exh. 1]
31. The 2017 IEP provided specifically for nursing services on a consultation basis as needed; occupational therapy services on a consultation basis as needed; physical therapy services on a consultation basis as needed; social work services on a consultation basis for 1-2 sessions per month for 20 minutes; and speech and language services on a consultation basis as needed. [Jt. Exh. 1]
32. This IEP also determined that the MoCi classroom was the most appropriate placement for Student and continued her education program placement at the Project CHOICE classroom. [Jt. Exh. 1]

33. On March 24, 2017, Petitioner provided a letter from Benjamin S. Ramirez, M.D. indicating that Student has a history of seizure disorder and cognitive impairment. He stated that she is taking anticonvulsant medication and is having problems with recent adjustments to the medication. He stated that in addition to those problems, Student is having problems with anxiety while attending school. He stated that these conditions would cause Student to miss more than 5 consecutive days of school at a time. He requested homebound services.
34. Homebound/hospitalized service is a self-study program designed to help pupils who are unable to attend school due to a medical condition to keep up with their studies and to progress as far as possible given their medical condition(s). Each school district must provide homebound/hospitalized instructional services to an enrolled pupil who is certified by the pupil's attending physician, hospital, or licensed treatment facility as having a medical condition that requires the pupil to be hospitalized or to be confined to the home during regular school hours for a period longer than five school days.
35. Section 109 of the State School Aid Act [MCL 388.1709] provides the legal requirements for homebound and hospitalized services for all pupils. Administrative Rules 340.2(11) and 340.2(12) provide the membership requirements for homebound and hospitalized services for all pupils. Programming homebound and hospitalized services for pupils with an individualized education program (IEP) must meet specific requirements in the Michigan Administrative Rules for Special Education (MARSE) at R 340.1746.
36. Because the letter does not certify that Student is confined to her home as would be required for services under the MARSE rules, District staff contacted Dr. Ramirez to determine if Student was confined to her home during the school day. Dr. Ramirez indicated that Student was not in fact confined to her home during the school day.
37. As part of a negotiated agreement with the Circuit Court, rather than homebound instructional services since Student is not confined to her home, Student has been receiving educational services for 6 hours a week at the Transition Center after the end of the school day. These services are being provided by Special Education Teacher Stephen Bellaw and a para-professional.

38. This ALJ's knowledge of the Circuit Court proceedings is limited to the testimony provided by various witnesses. No documents or court orders concerning the Circuit Court matter were provided by either party.

39. Mr. Bellaw testified that since he began providing services to Student in April, she has made progress. However, he does not believe that the alternative educational setting at the transition center after school is appropriate for Student. He stated that Student has no access to peers and this is affecting her socialization skills.

40. The Project CHOICE, Moderately Cognitively Impaired Classroom, is the best placement for Student to receive the best educational benefit.

DISCUSSION

In the instant matter, like in most due process hearings, several witnesses testified and there were numerous exhibits offered and admitted into evidence. After reviewing all of the testimony, stipulated facts and admitted exhibits, I find that Petitioner has failed to establish that the moderately cognitively impaired classroom, Project Choice, is not the best educational placement for Student.

Student has an IQ within the range of 43-46 which falls in the Extremely Low range. Student demonstrates extremely low cognitive abilities. Student's academic functioning is consistent with her intellectual level.

Petitioner contends that the IEP developed in February 2016 does not provide for the appropriate services for Student, specifically that Student should receive direct physical therapy, occupational therapy and speech and language services. While it is unclear from the record whether the appropriate individuals participated in the February 2016 IEP team meeting, Petitioner failed to produce any evidence to indicate that Student needed direct services from an occupational therapist, a speech and language pathologist or a physical therapist to access the educational curriculum.

In March 2016, additional assessments or evaluations were completed by an occupational therapist, a speech and language pathologist or a physical therapist. The assessments or evaluations all indicated that Student did not need their services to access the educational curriculum. While Student may have deficits in all three areas that would benefit from the services in a medical model; under IDEA, these services are the responsibility of the local school district only when the services are necessary for a Student to access the educational curriculum to meet her educational goals.

Although Petitioner contends that Student requires the services of a one to one aide, she has produced no evidence to support this contention. The MoCi classroom is a

small classroom that has a teacher and two aides. Based on the evidence submitted, there is nothing to indicate that Student requires more support than is provided in the MoCi classroom in order to meet her educational goals. The goals in this matter are designed for Student to have as much independence as possible. The goals include job skills and a transition plan for after Student completes her educational program.

In this matter, Petitioner has failed to produce any evidence that Student requires the direct services of an occupational therapist, a speech and language pathologist or a physical therapist. The educational program in the MoCi classroom incorporates educational components that are designed to improve Student's speech and motor skills and therefore, no direct services are necessary for Student to meet her educational goals.

Petitioner contends that the IEP developed in February 2017 does not require the appropriate services for Student. Specifically, Petitioner contends that Student should receive direct physical therapy, occupational therapy and speech and language services. It is clear from the record that the 2017 IEP team consisted of the appropriate team members. Petitioner has failed to produce any evidence that the 2017 IEP educational program was not reasonably calculated to enable Student to make appropriate progress considering the child's circumstances.

Generally, the fact that the goals are identical in the 2016 and 2017 IEP would raise concerns regarding the appropriateness of the goals. However, in this case, because of Student's failure to attend school on a regular basis, Student did not achieve the 2016 goals and those goals needed to be carried over to 2017. The fact that Student only attended 17 days of school clearly impacted her educational progress in achieving the goals in her IEP. Because of Student's attendance or lack thereof, the goals from 2016 IEP were not achieved.

Petitioner seems to contend that Student is not safe at school. However, Petitioner has failed to provide any evidence to support this contention. Petitioner points to the seizure that she contends Student suffered in January 2017 as a basis for this concern. First, Petitioner has not established that Student actually suffered a seizure while at school on January 6, 2017. Second, Student has a diagnosed seizure disorder. There has been no evidence presented that Student is more likely to suffer seizures at school than any other location. Third, the actions of the school staff in response to Student's behavior on January 6, 2017 appear to be appropriate. Ms. Fechik, Student's teacher, had Student sit. Ms. Fechik contacted the administration to have a school nurse respond. Ms. Fechik observed Student until the nurse arrived. The nurse checked Student and observed her symptoms. The school nurse contacted Petitioner and explained the circumstances. Petitioner declined to come to the school and pick-up Student. Petitioner indicated that she would be making an appointment with Student's

neurologist. There does not seem to be any more that the school could or should have done in these circumstances.

The second incident that Petitioner points to as a safety concern for her daughter was the result of an accident. Student, as part of the job skills component of her instruction, was with other students completing a task. A student was disposing of a bag and did not realize Student had walked in front of her. She inadvertently hit Student with the bag. This was purely an accident. Again, there has been no evidence that the School District's staff did not respond appropriately.

Respondent District contends that the best placement for Student is a Moderately Cognitive Impaired (MoCI) Classroom, Project Choice. This is a program operated by the Genesee Intermediate School District. It is a specialty program for students with moderate cognitive impairments. This classroom does provide, to the maximum extent appropriate, access to non-disabled peers during lunch, special events, school based job training experiences and peer joint interaction. It provides social, human growth and development, communication, gross and fine motor skills as well as individualized functional academics. The District contends that the curriculum in this classroom is the most appropriate for Student given her abilities.

The MoCI uses the Brigance Life Skills Inventory as part of its curriculum. The Brigance Life Skills Inventory curriculum consists of speaking and listening skills, functional writing skills, telephone skills, money and finance, food, clothing, health, as well as travel and transportation.

Petitioner contends that the best placement for Student is the Mildly Cognitive Impaired (MiCI) Classroom. The core curriculum for the MiCI is based on the Extended Grade-Level Content Expectations. The MiCI language arts curriculum consists of grammar and usage, paragraph and letter writing, basic word processing, story elements, building reading fluency, spelling word study, handwriting, and reading genres. There are journals and weekly spelling lists. The extended math curriculum includes pre-algebra. To support her contention, Petitioner has provided a report from Danielle Shapiro, Ph.D., Assistant Professor, Licensed Clinical Psychologist. Dr. Shapiro recommended that Student return to school. In addition, she stated "Without knowing the specific composition of the available classroom, I would recommend placement in the mild CI program as this appears to be the least restrictive environment for her". Dr. Shapiro did not testify at the hearing. She gave no indication as to what source(s) she based her recommendation. Furthermore, she specifically stated that she did not know the specifics of the MoCi or MiCi classrooms. Therefore, little credibility can be given her recommendation. All the various testing and assessment administered by Dr. Shapiro are consistent with the testing and evaluations previously completed.

Beginning in April 2017, Student participated in an educational program only after school hours at the transition center. While this placement permitted Student to make progress on her academic goals, it did not permit any socialization with peers. This placement is highly restrictive and it not appropriate for Student. It is noted that this placement was instituted outside of any IEP process and was implemented as part of a court negotiated settlement to address Student's truancy. Therefore, any lack of FAPE as a result of this placement is excused because of the Court's order.

Petitioner has failed to establish be a preponderance of the evidence that the MoCi Classroom educational placement determined by the IEP team is not appropriate.

CONCLUSIONS OF LAW

1. Petitioner did not establish, by a preponderance of the evidence, that the February 20, 2017 IEP should have included direct speech therapy services, physical therapy services, occupational therapy services and a one to one aide for Student to receive a free appropriate public education.
2. Petitioner did not establish, by a preponderance of the evidence, that the February 2, 2016 IEP should have included direct speech therapy services, physical therapy services and occupational therapy services and a one to one aide for Student to receive a free appropriate public education.
3. Petitioners did not establish, by a preponderance of the evidence, that Student's placement in the Moderate Cognitively Impaired Program was not the appropriate least restrictive placement for Student.
4. Respondent's Motion for a Directed Verdict is granted.

ORDER

IT IS ORDERED Petitioners' complaint is denied.

IT IS FURTHER ORDERED that any claims or defenses not specifically addressed herein are dismissed with prejudice.


A party aggrieved by this decision may seek judicial review by filing an action in a court of competent jurisdiction within 90 days of the date of this order.



Kandra Robbins
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 10th day of August, 2017.



Pamela Moore
Michigan Administrative Hearing System

Carman-Ainsworth Community Schools
G-3475 W. Court St.
Flint, MI 48532

Genesee Intermediate School District
Steve Polega, Special Education Services
2413 W. Maple Street
Flint, MI 48507

John C. Kava
Collins & Blaha
31440 Northwestern Highway., Suite 170
Farmington Hills, MI 48334-2374

Julie Markham
Department of Education
PO Box 30008
Lansing, MI 48933

