

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

**IN THE MATTERS OF:**

**T.W. o/b/o I.B.,  
Petitioner**

**v**

**Kalamazoo Public Schools,  
Respondent**

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**Docket No.: 17-023095**

**Case No.: 17-00076**

**Agency: Education**

**Case Type: ED Sp Ed Regular**

**Filing Type: Appeal**

**AND**

**Kalamazoo Public Schools,  
Petitioner**

**v**

**T.W. o/b/o I.B.,  
Respondent**

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**Docket No.: 17-024702**

**Case No.: 17-00079**

**Agency: Education**

**Case Type: ED Sp Ed Regular**

**Filing Type: Appeal**

**Issued and entered  
this 20<sup>th</sup> day of February, 2018  
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 or about October 26, 2017, Petitioner filed a due process request/complaint with the Michigan Department of Education (MDE). MDE forwarded the Due Process Hearing Request to the Michigan Administrative Hearing System (MAHS) for hearing. It was assigned to Administrative Law Judge (ALJ) Kandra Robbins.

On November 8, 2017, a Prehearing Conference was convened in this matter. The Petitioner T.W. and advocate George White appeared on behalf of the Petitioner and Attorney Jeffrey Butler appeared on behalf of Respondent. Mr. Butler told the Tribunal

that the District filed a due process request/complaint with the Michigan Department of Education and would be requesting consolidation of the related matters. It was determined to continue the Prehearing Conference until the new matter had been forwarded to MAHS. On November 13, 2017, MDE forwarded the District's Due Process Hearing Request to MAHS for hearing.

A second Prehearing Conference was convened on November 20, 2017. An Order Consolidating the two matters were received. Because of technical difficulties with Petitioner T.W.'s phone, this Prehearing Conference was continued to November 28, 2017. As part of the Prehearing Conference, the issues for hearing were clarified and the dates for the hearing were determined. The hearing was scheduled to last four days. However, it was completed in three.

On January 16, 2018 the Due Process Hearing was convened as scheduled. Petitioner T.W.<sup>1</sup> appeared on her own behalf. Advocate Elisheva Johnson appeared with Petitioner T.W. Attorney Jordan Bullinger appeared on behalf of the School District (District)<sup>2</sup>. When the hearing was convened on January 17, 2018, Petitioner T.W. was accompanied by advocate Robin Hicks. When the hearing convened on the final day, January 18, 2018, Petitioner T.W. was accompanied by advocate George White. The hearing concluded on that date.

Petitioner T.W. failed to exchange any exhibits by January 9, 2018 as required in the November 29, 2017 Order Following Prehearing Conference. Petitioner T.W. was told that failure to provide copies of proposed exhibits would result in the denial of their admission pursuant to 34 CFR 300.512(a)(3). Petitioner T.W. did not offer any exhibits during the hearing.

The following exhibits were offered by District and admitted into evidence:

1. District Exhibit No. 1 is a Psychological Evaluation, dated August 10, 2015.
2. District Exhibit No. 2 is an Initial Evaluation Team Report, dated November 11, 2015.
3. District Exhibit No. 3 is Functional Behavioral Assessment dated November 11, 2015.
4. District Exhibit No. 4 is an Individualized Education Program, dated November 11, 2015.

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<sup>1</sup> Although Petitioner T.W. is the respondent in one of the matters, for consistency, the Parent T.W. will be referred to as Petitioner T.W. in this written decision.

<sup>2</sup> Because the District is the Respondent in one matter and the Petitioner in the other, the "District" will be used to refer to the Kalamazoo Public Schools

5. District Exhibit No. 5 Individualized Education Program, dated December 3, 2015.
6. District Exhibit No. 6 is an Individualized Education Program, dated November 6, 2017.
7. District Exhibit No. 7 is an Individualized Education Program, dated November 6, 2017.
8. District Exhibit No. 8 is Progress Reporting.
9. District Exhibit No. 9 is School Social Work Logs.
10. District Exhibit No. 10 is School Social Work Intervention Sheets.
11. District Exhibit No. 11 is Behavior Incidents.
12. District Exhibit No. 12 is Behavior/Incident Referral dated October 19, 2016.
13. District Exhibit No. 13 is Student Restraint form dated, October 19, 2016.
14. District Exhibit No. 14 is a Behavior Plan, dated October 31, 2016.
15. District Exhibit No. 15 is a Manifestation Determination Review, dated November 1, 2016.
16. District Exhibit No. 16 is a Safety Plan, dated November 1, 2016.
17. District Exhibit No. 17 is a Suspension Letter and Offer of FAPE, dated November 17, 2016.
18. District Exhibit No. 18 is a Manifestation Determination Review, dated December 5, 2016.
19. District Exhibit No. 19 is a Meeting Agenda, dated January 16, 2017.
20. District Exhibit No. 20 is a Meeting Agenda, dated March 8, 2017.
21. District Exhibit No. 21 is a Review of Existing Evaluation Data, dated March 8, 2017.

22. District Exhibit No. 22 is a Suspension Letter and Offer of FAPE, dated March 21, 2017.
23. District Exhibit No. 23 is an Incident Report, dated March 21, 2017.
24. District Exhibit No. 24 is a Manifestation Determination Review, dated March 28, 2017.
25. District Exhibit No. 25 is a Suspension Letter and Offer of FAPE, dated April 14, 2017.
26. District Exhibit No. 26 is a Manifestation Determination Review, dated May 3, 2017.
27. District Exhibit No. 27 is a Functional Behavioral Assessment, dated May 3, 2017.
28. District Exhibit No. 28 is a Suspension Letter, dated May 11, 2017.
29. District Exhibit No. 29 is a Manifestation Determination Review, dated May 24, 2017.
30. District Exhibit No. 30 is an email regarding behavior sheet, dated September 14, 2017.
31. District Exhibit No. 31 is an email dated September 19, 2017.
32. District Exhibit No. 32 is a Suspension Letter and Offer of FAPE, dated September 26, 2017.
33. District Exhibit No. 33 is an Agenda, dated September 29, 2017.
34. District Exhibit No. 34 is a Behavior Sheet.
35. District Exhibit No. 35 is Emails, dated September 29, 2017.
36. District Exhibit No. 36 is a Suspension Letter, dated October 3, 2017.
37. District Exhibit No. 37 is an Incident Report, dated November 30, 2017.
38. District Exhibit No. 38 is a Suspension letter, dated October 10, 2017.
39. District Exhibit No. 39 is a Suspension letter, dated October 18, 2017.

40. District Exhibit No. 40 is Emails, dated October 24, 2017.
41. District Exhibit No. 41 is a Review of Existing Evaluation Data, dated October 27, 2017.
42. District Exhibit No. 42 is an agenda, dated October 31, 2017.
43. District Exhibit No. 43 was not offered.
44. District Exhibit No. 44 is a Behavior Plan, dated May 3, 2017.
45. District Exhibit No. 45 is Zoo U Reports.
46. District Exhibit No. 46 is Behavior Sheets for the 2016/2017 school year.
47. District Exhibit No. 47 is Behavior Sheets for September 2017.
48. District Exhibit No. 48 is Behavior Sheets for November and December 2017.
49. District Exhibit No. 49 is an email thread, dated February 21, 2017.
50. District Exhibit No. 50 is an email thread, dated March 16, 2017.
51. District Exhibit No. 51 is Behavior Incidents Reports for the 2016/2017 and 2017/2018 school years.
52. District Exhibit No. 52 is Sheila Sherwood Resume.
53. District Exhibit No. 53 is Reuquiyah Saunders Resume.
54. District Exhibit No. 54 is Jose Daniel Garcia Resume.
55. District Exhibit No. 55 was not offered.
56. District Exhibit No. 56 is Andreea Frew Resume.
57. District Exhibit No. 57 is Brooke Kissell Resume.
58. District Exhibit No. 58 is Lisa Dewey Resume.
59. District Exhibit No. 59 is Kirsten Jennings Resume.

60. District Exhibits No. 60 and 61 were not offered.

The following individuals testified in this matter:

1. Sheila Sherwood, Special Education Teacher
2. Lisa Dewey, Principal
3. Andreea Frew, School Psychologist
4. Jose Garcia, School Social Worker
5. Brooke Kissell, Special Education Teacher
6. William Hopewell, Special Education Teacher
7. Kirsten Jennings, School Social Worker
8. Reuquiyah Saunders, Director of Special Education
9. Ethel Buchanan

### **ISSUES**

During the Prehearing Conference held on November 28, 2017, the following issues were identified as the issues for the hearing.

- i. Did the District provide FAPE to Student particularly in relationship to his reading needs including the provision phonics?
- ii. Did the District address the unique educational and behavioral needs of Student by developing, reviewing, and revising an IEP consistent with 34 CFR 300.114 and 300.320 through 300.324?
- iii. Did the District implement the discipline protections for Student pursuant to 34 CFR 300.530 through 300.536?
- iv. Did the District provide educational services to Student that would enable him to continue to participate in the general education curriculum although in another setting and to progress toward meeting the goals set out in Student's IEP consistent with 34 CFR 300.530(d)(1)?

- v. Did the District respond appropriately to the alleged bullying of Student and Student's changing needs pursuant to 34 CFR 300.324(b)(1)(ii)(C)(D)(E)?
- vi. Did the District respond to disability-related behavior with a pattern of removals, including restraint/seclusion, rather than providing positive behavioral supports and interventions to Student consistent with 34 CFR 324(a)(2) and 300.320(a)(4)?

At the beginning of the hearing, Petitioner stated that the issue related to the provision of phonic education had been resolved leaving the remaining five issues raised by the District as the issues for the hearing.

### **APPLICABLE LAW**

The Petitioner, 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). Although the District is not actually challenging the provision of services, the Parent has not raised any claims challenging the District's actions. The District has brought these claims and therefore, has the burden of proof in this matter.

The Code of Federal Regulations, 34 CRF 300.39 defines "special education" as follows:

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including— (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education.  
34 CFR 300.39

Michigan Administrative Rule for Special Education, R 340.1701c(c) defines "special education" as follows:

"Special education" means specially designed instruction, at no cost to the parents, to meet the unique educational needs of the student with a disability and to develop the student's maximum potential. Special education includes instructional services defined in R 340.1701b (a) and related services.

The Federal Regulations defines “specially designed instruction” as follows:

Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

- (i) To address the unique needs of the child that result from the child’s disability; and
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 CFR 300.39(b)(3)

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.

Under 20 USC 1415(f)(3)(E), it may be found that FAPE has been denied to a disabled student based on either substantive or procedural violations of the Individuals with Disabilities Education Act (IDEA or Act). To find a denial of FAPE based on procedural violations of the Act, it must also be found that the procedural violation impeded the student's right to FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to their child, or caused a deprivation of educational benefits.

In *Board of Education of Hendrick Hudson Central School District v Rowley*, 458 US 176, 102 S Ct 3034, 73 L Ed 2d 690 (1982), the U.S. Supreme Court articulated the two bases for assessing the provision of FAPE. The first was whether the school district had complied with the procedural requirements of the Act, and the second was whether the student's Individualized Educational Program (IEP) was "reasonably calculated" to enable the student to receive educational benefits. *Id.*, at 206-07. This standard has been further clarified in *Endrew F.* where the U.S. Supreme Court stated that a student's “educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” *Endrew F v Douglas County School District* 137 S.Ct. 988 (2017)

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 asked 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. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F.* 137 S. Ct. 988.

The Code of Federal Regulations provide in pertinent part:

34 CFR 300.530 Authority of school personnel

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General.

(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536 ).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services.

- (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must-
    - (i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
    - (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
  - (2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.
  - (3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.
  - (4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
  - (5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.
- (e) Manifestation determination.
- (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all

relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine-

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  - (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.
- (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
- (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.
- (f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must-
- (1) Either-
    - (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
    - (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
  - (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.
- (g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child-

- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
  - (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
  - (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.
- (h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.
- (i) Definitions. For purposes of this section, the following definitions apply:
- (1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act ( 21 U.S.C. 812(c) ).
  - (2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
  - (3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
  - (4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

34 CFR 300.532

- (a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).

(b) Authority of hearing officer.

- (1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.
- (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may-
  - (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or
  - (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
- (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing.

- (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.
- (2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

\* \* \*

- (5) The decisions on expedited due process hearings are appealable consistent with §300.514.

- (a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if-
- (1) The removal is for more than 10 consecutive school days; or
  - (2) The child has been subjected to a series of removals that constitute a pattern-
    - (i) Because the series of removals total more than 10 school days in a school year;
    - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
    - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- (b)
- (1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
  - (2) This determination is subject to review through due process and judicial proceedings.

34 CFR 300.114. LRE requirements:

- (a) General.
- (1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.
  - (2) Each public agency must ensure that-
    - (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
    - (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational

environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 CFR 300.320. Definition of individualized education program

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include-

- (1) A statement of the child's present levels of academic achievement and functional performance, including-
  - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
  - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
- (2) (i) A statement of measurable annual goals, including academic and functional goals designed to-
  - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
  - (B) Meet each of the child's other educational needs that result from the child's disability;
- (ii) For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;
- (3) A description of-
  - (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
  - (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of

quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

- (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child-
  - (i) To advance appropriately toward attaining the annual goals;
  - (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
  - (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
- (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
- (6)
  - (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
  - (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why-
    - (A) The child cannot participate in the regular assessment; and
    - (B) The particular alternate assessment selected is appropriate for the child; and
- (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.



(b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include-

- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

\* \* \*

34 CFR 300.321. IEP Team

(a) General. The public agency must ensure that the IEP Team for each child with a disability includes-

- (1) The parents of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of the public agency who-
  - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - (ii) Is knowledgeable about the general education curriculum; and
  - (iii) Is knowledgeable about the availability of resources of the public agency.
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;

- (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) Whenever appropriate, the child with a disability.

\* \* \*

#### 34 CFR 300.322. Parent participation

(a) Public agency responsibility-general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including-

- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- (2) Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parents.

(1) The notice required under paragraph (a)(1) of this section must-

- (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
- (ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must-

(i) Indicate-

- (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and

- (B) That the agency will invite the student; and
  - (ii) Identify any other agency that will be invited to send a representative.
- (c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).
- (d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as-
  - (1) Detailed records of telephone calls made or attempted and the results of those calls;
  - (2) Copies of correspondence sent to the parents and any responses received; and
  - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

\* \* \*

- (f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent.  
34 CFR 300.324. Development, review, and revision of IEP
  - (a) Development of IEP-
    - (1) General. In developing each child's IEP, the IEP Team must consider-
      - (i) The strengths of the child;
      - (ii) The concerns of the parents for enhancing the education of their child;
      - (iii) The results of the initial or most recent evaluation of the child; and

(iv) The academic, developmental, and functional needs of the child.

(2) Consideration of special factors. The IEP Team must-

(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) Consider whether the child needs assistive technology devices and services.

(3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of-

- (i) Appropriate positive behavioral interventions and supports and other strategies for the child; and
- (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).

(4) Agreement.

- (i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
- (ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.

(5) Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) Review and revision of IEPs-

- (1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team-
  - (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address-

- (A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;
- (B) The results of any reevaluation conducted under §300.303;
- (C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);
- (D) The child's anticipated needs; or
- (E) Other matters.

(2) Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

(3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

(c) Failure to meet transition objectives-

(1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) Construction. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

### 34 CFR 300.324. Development, review, and revision of IEP

(a) Development of IEP-

(1) General. In developing each child's IEP, the IEP Team must consider-

- (i) The strengths of the child;
- (ii) The concerns of the parents for enhancing the education of their child;
- (iii) The results of the initial or most recent evaluation of the child; and
- (iv) The academic, developmental, and functional needs of the child.

(2) Consideration of special factors. The IEP Team must-

- (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

\* \* \*

- (v) Consider whether the child needs assistive technology devices and services.

(3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of-

- (i) Appropriate positive behavioral interventions and supports and other strategies for the child; and
- (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).

(4) Agreement.

- (i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead

may develop a written document to amend or modify the child's current IEP.

(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.

(5) Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) Review and revision of IEPs-

(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team-

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address-

(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under §300.303;

(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.



- (2) Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.
- (3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

\* \* \*

### **FINDINGS OF FACT**

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

1. Student<sup>3</sup> is currently nine years old.
2. In August 2015, Student was referred to Michael Ryan, Licensed Psychologist for psychological testing. Dr. Ryan diagnosed Student with Dyslexia, Oppositional Defiant Disorder, and Attention Deficit Disorder. He noted Student's weaknesses to be attention, working memory, persistence at a repetitive paper and pencil tasks, visual-spatial relationships, visual processing, phonological processing, reality testing, emotional control, relatedness to others, and self-image. He stated that Student's weaknesses overwhelm his strengths and he becomes anxious and frustrated. [Ex. 1]
3. Dr. Ryan recommended individual tutoring using a multi-sensory phonetic approach to remediate Student's academic deficits. [Ex. 1]
4. In November 2015, Student was in the second grade attending Prairie Ridge Elementary within the Kalamazoo schools. The District completed an Initial Evaluation for Special Education Services. After the completion of a comprehensive evaluation, it was recommended that Student has a specific learning disability. [Ex. 2]
5. As part of the initial evaluation, a Functional Behavior Assessment was completed on November 11, 2015. Student's behaviors at the time were prioritized as 1. Off-task behaviors; 2. Inappropriate social interactions; 3. Non-compliance and 4. Physically aggressive. [Ex. 3]
6. An Individualized Education Program (IEP) was developed in November 2015.

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<sup>3</sup> Student will be used to protect the privacy of the minor child.

The IEP team consisted of Susan Chicvara, General education teacher; Renee Schanski, as the evaluation team representative; Petitioner T.W., parent; Karen Spencer as the School District Representative, and Lisa Wolf. It is unclear as Ms. Wolf's role as it is not included on the IEP. It was determined that Student was eligible for services as a Student with a Specific Learning Disability. The Present Level of Academic Achievement and Functional Performance (PLAAF) noted that Student's reading scores were below average. The reading scores were below age and grade expectations. Student was at the Level D on the Fountas and Pinnell assessment. Student's writing skills were also below age and grade expectations. Student's math skills were noted to be stronger than his reading and writing. The PLAAF noted that general classroom accommodations and interventions might be necessary to allow Student to continue to make progress in math in the general education curriculum. Finally, the PLAAF noted student area of need for socio-emotional / Behavior noted off-task behaviors and social interactions as areas of need. [Ex. 4].

7. The November 2015 IEP contained three goals. The first goal is a Reading goal that is related to the ELA Common Core Fluency Comprehension. The grade level standard is to distinguish long and short vowels when reading regularly spelled one-syllable words. This goal is supported by two objectives. The first objective is that by May 2016, Student would reach 1.3 reading level (Level F) on the Fountas and Pinnell benchmark test. The second objective is that by November 2016, Student will reach a 1.5 reading level (Level G) on the Fountas and Pinnell benchmark test. [Ex. 4].
8. The writing goal is an ELA Common Core written expression goal. The Anchor standard is that Student will produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience. The goal is that by November 2016, Student will write one complete sentence using a capital letter to start, period to end and use correct spelling for cvc words in 4 out of 5 trials. The goal is supported by two objectives. The first is that by November 2016, Student will spell cvc words 80% on written monthly tests. The second objective is that by November 2016, Student will write one complete sentence using a capital letter to start and period to end. This would be measured as 4 out of 5 trials on monthly written tests. [Ex. 4]
9. The final goal contained in the November 2015 IEP is a behavioral goal. The first objective for the goal is that by November 2016, Student will exhibit on-task behavior 75% of the time when working at his instructional level. The second objective is that by November 2016, Student will complete 75% of his assigned work when working at this instructional level. [Ex. 4]
10. The IEP provided that Student would receive 600 minutes of special education in

the Resource program and 1275 minutes in general education. Although the IEP has checked the box indicating that the IEP team has considered the anticipated needs of this student including the need for extended school year services, there is nothing to indicate what considerations were discussed. [Ex. 4]

- 11.A Notice Regarding Provision of Special Education was sent to Petitioner. Petitioner refused to consent to the provision of Special Education services in the November 2015 IEP.
12. Another IEP meeting was scheduled for December 3, 2015. The team consisted of Susan Chicvara, general education teacher; Diane Venzant, general education teacher; Renee Schanski, evaluation team representative; Andreea Frew, school psychologist; Reuquiyah Saunders, Director of Special Education; Petitioner T.W., parent; school district representatives Karen Spencer and Lisa Dewey; Lisa Wolf; Jose Garcia, social worker; Robin Hicks, Barry Smith; Domonique Ray, family advocate; Nkenge Bergan, student services. The IEP contained the same goals and PLAAF as the November 2015 IEP. The IEP provided for the same educational placement. Petitioner did consent to the provision of services after the December 2015 IEP. [Ex. 5]
13. At the end of the 2015/2016 school year, Student had multiple time outs per day due to chronic disruption and noncompliance in the classroom. These did not result in office referrals or suspensions as Student was able to successfully process and return to the classroom. [Ex. 6]
14. At the start of the 2016/2017 school year, Student continued to need multiple time outs per day due to chronic behavior incidents. However, Student had significant difficulty re-engaging and returning to the classroom. [Ex. 6]
15. On October 19, 2016 at about 2:40 p.m., Mrs. Sherwood completed a Behavior / Incident Referral regarding Student. While working with Mrs. Sherwood at the teacher table, Student picked up a chair and held it over his head. Mrs. Sherwood instructed him to "put the chair down". Student said "okay you want me to put it down?" then he slammed the chair on the floor as hard as he could. He then grabbed the chair and started pulling it across the room. The chair pulled several other chairs down with it. Student then proceed to grab and throw chairs. Two chairs came within inches of hitting other students in the classroom. Mrs. Sherwood had to have the other students evacuate the classroom and go into the hallway for their safety. [Ex. 12]
16. Student left Mrs. Sherwood's classroom and went to the office to cool down. While in the office on October 19, 2016 at approximately 3:00 p.m., Student became more upset and began kicking and punching Principal Dewey. He was

throwing office chairs at her over his head. As a result, Student had to be restrained. Principal Dewey and Martha Serio placed Student in a two-person restraint. Ms. Dewey and Ms. Serio have both been trained in CPI. Ms. Dewey requested the assistance of three other staff members that are also certified in CPI, Tia Whitley, Adriene Davis and Sheila Sherwood. Ms. Dewey indicated that the two-person restraint was required for approximately 40 minutes. The staff would switch off. The staff attempted to release Student multiple times, but he continued to be physically violent, punching, kicking and attempting to stab staff. [Ex. 13 / Tr. Vol. I, pgs. 171-173]

17. Because of Student's behavior on October 19, 2016, he was suspended from October 20 to November 2, 2016. Ms. Dewey provided notice of the suspension to Petitioner. [Ex. 13]
18. A Manifestation Review was held on November 1, 2016 to review the October 19, 2016 incident. The following individuals participated: Student; Petitioner T.W.; Diane Venzant-Baker, general education teacher; Sheila Sherwood, special education teacher; Andreea Frew, school psychologist; Jose Garcia, school social worker; Nkenge Bergan, Student Services; Felishevat Johnson, family advocate; Lisa Dewey, principal; Tia Whitley, behavior and academic specialist; Barry Smith; Robin Hicks; and Dominique Ray, family advocate. The team determined that the incident as a manifestation of Student's disability. A new plan was developed to focus on Safety Plan for Violent Behaviors and walking out of class. [Ex. 15 and 16]
19. On November 10, 2016, an annual review of the IEP was held. The following individuals participated in this team meeting: Student; Diane Venzant-Baker, general education teacher; Sheila Sherwood, Special Education Teacher; Andreea Frew, evaluation team representative; Jose Garcia, school social worker; Petitioner T.W.; Lisa Dewey, principal; and Rikki Saunders, Director of Special Education. During this review, the Team determined that Student remained eligible for special education services as a Student with a specific learning disability. [Ex. 6]
20. At the time of the November 2016 IEP, Student was in the third grade. The Team noted that Student's present level on the Fountas and Pinnell Assessment was Level H or 1.8, eighth month of the first-grade level. Student's reading levels remained below average in age and grade level expectations. Student's writing level also remained below average in age and grade level expectations. [Ex. 6]
21. During this IEP review, Mathematics was now identified as an area of need. The IEP specifically noted that Student's reading and behavior were not affecting his ability to complete math assignments and tasks in the classroom. [Ex. 6]

22. The November 2016 IEP included four goals. The first goal is a reading goal related to the basic reading skills of fluency and comprehension. The Annual Goal is that by November 2017, Student will improve in accuracy, fluency, and comprehension skills by reading a Fountas and Pinnell Level L (2.8, eighth month of the second grade) with excellent comprehension and 90% accuracy as measured by the Fountas and Pinnell Benchmark Assessment. This goal is supported by three objectives. The first objective is that Student will read Fountas and Pinnell Level I with excellent comprehension. The second objective is that Student will read Fountas and Pinnell Level J will excellent comprehension. The third objective is that Student will read Fountas and Pinnell Level K (2.5, fifth month of second grade) with excellent comprehension. There are no timeframes associated with the reading objectives. Although the IEP indicates that Student will be assessed in September, February and April for each objective. [Ex. 6]
23. The second goal in the November 2016 IEP is a writing goal. The Annual Goal is that by November 2017, Student will write complete sentences using capital and lowercase letters appropriately with spaces between words and correct ending punctuation 80% of the time as measured by classroom assignments. This goal is supported by three objectives. The first objective is that Student will write one complete sentences (sic) using capital and lowercase letters appropriately ending. The second objective is that Student will write two complete sentences using capital and lowercase letters appropriately. The third objective is that Student will write two complete sentences using a capital letter to start and period to end. Again, there are no timeframes associated with any of the objectives. [Ex. 6]
24. The third Annual Goal is a mathematics goal. It is related to the Math Common Core Curriculum. It addresses Problem Solving specifically number and operations in base ten. The grade level standard is to fluently add and subtract multi-digit whole numbers using the standard algorithm. The Annual Goal is that by November 2017, Student will add and subtract double digit numbers with regrouping, with 80% accuracy as measured by teacher made evaluation. This goal is supported by four short-term objectives. The first objective is that Student will solve double digit addition problems without regrouping. The second objective is that Student will solve double digit subtraction without borrowing. The third objective is that Student will solve double digit addition problems with regrouping. The final objective in mathematics is that Student will solve double digit subtraction problems with borrowing. The objectives contain no timeframes. [Ex. 6]
25. The final goal in the November 2016 IEP is a socio-emotional/behavioral goal.

The focus is again on Off-Task behaviors and Social interactions. The goal is that by November 10, 2017, Student will demonstrate improvement in social peer interactions and following adult directives at least 50% of the time as documented by observations and daily check sheets. This goal is supported by three short-term objectives. The first objective is that Student will demonstrate appropriate peer interactions with minimal adult prompting at least 50% of the time. The second objective is that Student will follow adult directives with three or fewer prompts at least 50% of the time. The third objective is that Student will stay in his assigned space 50% of the time. [Ex. 6].

26. The November 2016 IEP called for a minimum of 600 minutes of special education in the resource program and a maximum of 1250 minutes in the general education classrooms. The IEP included no related services such as direct services with a social worker. [Ex. 6]
27. The November 2016 IEP stated as a Supplementary Aid and service that the School Social Worker and Psychologist would provide support in the area of social-emotional/behavioral goals on a weekly basis in all settings. The IEP does not specifically identify the amount of time either service provider would spend working with Student. [Ex. 6, pg. 6]
28. Jose Garcia<sup>4</sup>, school social worker, began working with Student on November 9, 2016. Mr. Garcia testified that social worker services were going to be included to address the concerns that Student was leaving the classroom, not following directions, escalating to a point where class management techniques were not being effective. [ Ex. 9 / Tr. Vol. II, pg. 378]
29. Mr. Garcia testified that he believed social worker services were appropriate. He testified that Student was becoming more aggressive, throwing items at adults especially the principal. Student was having difficulty being appropriate with peers. There were interactions where Student was aggressive toward peers prompting redirection from staff. Mr. Garcia testified that Student would leave the class a lot when he became frustrated with his academics or whatever reason. Student would roam the hallway. [Tr. Vol. II, pgs. 379-380]
30. Mr. Garcia testified that while working with Student he focused on anger management, transitions over to various interventions with relaxation techniques, progressive relaxation techniques. He used evidence-based techniques that he learned while being trained in Cognitive Behavioral Therapy. He worked on impulse control, emotional regulation techniques. Social skills because Student struggled to work well with others, peers and adults. [Tr. Vol. II, pg. 382]

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<sup>4</sup> Mr. Garcia has a Master of Social Work from Michigan State University. He maintains clinical licensure by the State. Mr. Garcia has been trained in cognitive behavioral therapy.

31. On November 17, 2016, Student was playing in the hallway when another student exited the bathroom, Student slapped the other child in the face. Principal Dewey prepared a letter of suspension indicating Student would be suspended on November 18, 2016 and could return on Monday, November 21, 2016. To ensure Student had services to meet his IEP goals, Mrs. Sherwood offered reading and math services from 8:15 a.m. until 8:45 a.m. on November 21, 2016. [Ex. 17]
32. A Manifestation Review was held on December 5, 2016 to review the November 17, 2016 incident. The participants included Diane Venzant-Baker, general education teacher; Sheila Sherwood, special education teacher; Petitioner T.W. and Principal Lisa Dewey. The team determined that the incident was a manifestation of Student's disability.
33. On January 16, 2017, a meeting was in response to an email sent by Petitioner T.W. and her advocate George White. A functional behavioral assessment (FBA) was discussed. However, no decision as to conducting a new FBA was reached. [Ex. 19/ Tr. Vol. II, pg. 300]
34. On March 8, 2017, a meeting was held to review Student's IEP and the progress he was making. During this meeting a Review of Existing Evaluation Data (REED) and Evaluation Plan was completed. The participants included: Student; Petitioner T.W.; Sheila Sherwood, special education teacher; Diane Venzant-Baker, general education teacher; Lisa Dewey, Principal; Rikki Saunders, Director of Student Services; Andreea Frew, school psychologist; and Jose Garcia, school social worker. During this meeting, it was determined that a Functional Behavioral Assessment was needed. [Ex. 20 / Ex. 21]
35. Petitioner T.W. consented to the FBA on March 20, 2017. [Ex. 21] At this time, Student's non-compliance and physical aggression became the primary behavioral concerns. The FBA was completed on May 3, 2017. [Ex. 27]
36. On March 21, 2017, Student was involved in a physical altercation. Student was in the bathroom without permission. A first grader was in a stall and a third grader was washing his hands. The first grader came out of the stall and bumped into the other third grader at the sink. Student then picked up the first grader and slammed him to the ground. The first grader developed a bump on his head and first aid was administered. Student was suspended for one day on March 22, 2017. Additional education services were offered on Tuesday, March 28, 2017 from 4:00 p.m. to 4:45 p.m. to allow Student to work on his math and reading goals. [Ex. 22 and Ex. 23]

37. On March 28, 2017, a Manifestation Determination was held to review the incident of March 21, 2017. The participants included: Petitioner T.W.; Diane Venzant-Baker, general education teacher; Sheila Sherwood, special education teacher; Andreea Frew, school psychologist; Lisa Dewey, Principal; and Jose Garcia, school social worker. The team noted that Student had a significant increase in behavioral outburst since March 8, 2017. The recent behavioral incidents were without observable antecedents. The team noted that the incident was again a manifestation of Student's disability. [Ex. 24]
38. On April 13, 2017, Student was again suspended for misconduct. The suspension was from Friday, April 14, 2017 returning to school on Monday, April 17, 2017. Student was offered additional tutoring on April 19, 2017 from 8:00 a.m. until 8:50 a.m. [Ex. 25]
39. On April 13, 2017, Student brought a recording device to school. The device was hidden in a pocket that was created using material and safety pins in Student's clothing. The safety pins came undone and Student reported to his teacher that something was poking him. In attempting to assist Student, Mrs. Sherwood found the hidden device. She confiscated the device. Student became upset and caused extreme destruction of school property. This included tearing items off the wall, flipping tables and chairs, throwing items off a bookshelf and tearing items off a board. [Ex. 26]
40. On May 3, 2017 a Manifestation Determination was held. Student; Petitioner T.W.; Diane Venzant-Baker, general education teacher; Sheila Sherwood, special education teacher; Andreea Frew, school psychologist; Lisa Dewey, Principal and Jose Garcia, school social worker participated. It was determined that the incident was a manifestation of his disability. [Ex. 26]
41. Mr. Garcia participated in a functional behavioral assessment as part of a team assessment that was completed on May 3, 2017. Mr. Garcia noted that as part of the process, the team determined that much of Student's behavior was work avoidance. He struggled academically so he would act out and start kicking things and throwing things and walk out of class. Mr. Garcia also noted that Student perceived situations as more severe. Mr. Garcia stated that Student would escalate sort of into whoever was in his way. He'd push them out of the way, climb lockers or run out of the school. Mr. Garcia testified that by the spring of 2017 Student's physical aggression had escalated. [Tr. Vol. II, pg. 390]
42. On May 11, 2017, Student was again involved in a physical altercation with another student. Student and a girl were playing with a ball she brought from home. When she asked for it back, Student jumped on her shoulders and pushed her to the ground choking her. An adult supervising the area observed the



incident and separated the students. A short time later, Student twisted the arm of another student behind his back causing a bruise. Student admitted to pushing the other student. Student was suspended, and a homework packet was sent. [Ex. 28]

43. On May 24, 2017, a Manifestation Determination was held to review the May 11, 2017 incident. The participants included: Student; Petitioner T.W.; Diane Venzant-Baker, general education teacher; Sheila Sherwood, special education teacher; Nkenge Gergan, Director of Student Services; Lisa Dewey, Principal; Jose Garcia, school social worker; and Rikki Saunders, Director of Special Education. The Team determined that the incident was a manifestation of Student's disability. [Ex. 29].
44. On September 25 and 26, 2017, Student was involved in repeated unsafe behaviors of leaving the classroom and building. As a result, he was suspended from school on September 27 and 28, 2017. A parent meeting was scheduled for 7:00 a.m. on September 29, 2017 to comply with Petitioner T.W.'s schedule. [Ex. 32]
45. During the meeting on September 29, 2017, after reviewing Student's current behavior interventions and supports, daily behavior sheets, and staff concerns, District representatives requested to have KRESA staff from Valley Center Learning Center and WoodsEdge Learning Center come to observe the Spring Valley staff and Student. It was hoped that perhaps fresh eyes might have suggestions for the District staff to address Student's escalating behaviors. Petitioner T.W. refused to consent to the observations because she believed that it was merely a pretext for placing Student in one of the two center-based learning centers. [Ex. 33]
46. There is no evidence to support Petitioner T.W.'s contention that the observations were merely a pre-text.
47. Student's behaviors continued to escalate throughout the fall of 2017. [Ex. 34].
48. On October 3, 2017, Student repeatedly left the classroom and building. While a staff member was supervising Student from a doorway, Student pushed a door upon the staff member in an unsafe manner. He was suspended from school for ½ day. [Ex. 36]
49. On October 9, 2017, Student had multiple physical fights with students. On three occasions, Student left the classroom without permission and ran up and down hallways and climbed up on top of lockers. While in the hallway, he initiated physical fights with multiple students. While on the playground, he pulled two

girls off the swings and punched one girl in the face. Student was suspended from school for two days. Student was given homework for the absences that he tore into pieces. Another packet of homework was available for pick-up in the office. [Ex. 38]

50. On October 18, 2017, Student had multiple physical fights with students. On two occasions, Student put other students in a headlock position. Student jumped on another student and kned the student in the face once he was on the ground. Student left the classroom without permission. When a staff member attempted to re-direct Student, he slammed a door into her side. [Ex. 39]

51. Student's behavior on October 18, 2017 was a violation of the Student code of conduct. However, rather than suspend Student again, the District staff decided to change his classroom location from Spring Valley elementary to the Northeastern Elementary. Student's educational placement as called for in his IEP was not changed. [Ex. 39]

52. A Review of Existing Evaluation Data (REED) and Evaluation Plan team meeting was held on October 27, 2017. The following individuals participated: Petitioner T.W.; Brooke Kissell, special education teacher; Michael Grantham, general education teacher; Lisa Dewey, Principal; Andreea Frew, school psychologist; Jose Garcia, school social worker; and Reuquiyah Saunders, Director of Special Education. At the time, the Team noted that due to ongoing behavioral concerns, a reevaluation was recommended to determine support planning, eligibility, as well as present level of performance. The team recommended additional evaluations in the areas of achievement and social/emotional/behavioral. Petitioner refused to consent to the evaluations. [Ex. 41 /Tr. Vol. II, pg. 316]

53. On November 6, 2017, an annual IEP review was held. The following individuals participated: Student; Petitioner T.W.; Levarn Smith, general education teacher; William Hopewell, special education teacher; Michelle Youngs, school psychologist; Brooke Kissell, Spring Valley special education teacher; Jordan Bullinger, District Legal Counsel; Robin Hicks, advocate; George White, parent support partner; William Hawkins, Principal; Jose Garcia, Spring Valley school social worker; Andreea Frew, Spring Valley school psychologist; Kirsten Jennings, school social worker; and Reuquiyah Saunders, Director of Special Education. At this time, Student was in the fourth grade and attending classes at Northeastern elementary. [Ex. 7]

54. In the November 2017 IEP, Student's PLAAF reflected that he was reading at level K (2.5, fifth month of second grade) on the Fountas and Pinnell Benchmark assessment. It noted that he had met 2/3 of the reading objectives. Student had met 2/4 of the math objectives. Student had met 1/3 of the writing objectives. It

also noted Student's behaviors had significantly impacted his ability to progress with the general education curriculum and be successful within the classroom setting. There was an increase in both physical aggression and unsafe behaviors. [Ex. 7]

55. The November 2017 IEP included five annual goals. The first goal is a reading goal with a focus on fluency and comprehension. The goal is that by November 2017, Student will improve in accuracy, fluency, and comprehension skills by increasing from an instructional Level K to an Instructional Level N (3.4, fourth month of third grade) with excellent comprehension and 95% accuracy as measured by Fountas and Pinnell. This goal is supported by three objectives. The first objective is that Student will read Fountas and Pinnell Level L (2.8) with excellent comprehension. The second objective is that Student will read Level M (2.10) with excellent comprehension. The third objective is that Student will read Level N (3.4) with excellent comprehension. [Ex. 7]
56. The second goal is a writing with a focus on written expression and handwriting. The annual goal is that By November 2018, Student will write one paragraph that includes a topic sentence and 4 detail sentences, using correct capitalization and punctuation, 80% of the time as measured by classroom assignments. This goal is supported by three objectives. The first is that Student will write a topic sentence and 2 detail sentences. The second is that Student will write a topic sentence and 3 detail sentences. The third objective is that Student will write a topic sentence and 4 detail sentences. [Ex. 7]
57. The third goal is a mathematics goal focusing on math computation and problem solving. The annual goal is that by November 2018, Student will subtract double digit numbers with regrouping and complete word problems involving double digit subtraction with regrouping with 80% accuracy as measured by teacher made assessments. This goal is supported with three objectives. The first is that Student will solve double digit subtraction without regrouping. The second is that Student will solve double digit subtraction without regrouping. The third objective is that Student will solve word problems that involve double digit subtraction with regrouping. [Ex. 7]
58. The fourth goal is a socio-emotional/behavioral goal focusing on off task behaviors and social interactions. The goal is that by November 2018, Student will demonstrate improvement in social interactions and following directions at least 50% of the time as documented by observations and daily check sheets. This goal is supported by four objectives. The first is that Student will remain in his assigned space 50% of the time. The second is that when Student becomes upset, angry or frustrated, he will use a self-regulation/coping strategy (i.e. taking a break in a quiet space, deep breathing, sensory breaks, etc.) with two or fewer

adult prompts 50% of the time. The third objective is that when presented with a non-preferred task, Student will begin the assignment with three or fewer prompts from an adult 50% of the time. The final objective for this goal is that Student will comply with adult directives with three or fewer prompts 50% of the time. [Ex. 7]

59. The final goal in the November 2017 IEP is a second reading goal focusing on basic reading skills. The goal is that by November 2018, Student will demonstrate improvement in his basic reading skills, particularly in decoding, by being able to read through an unfamiliar /multisyllabic word by applying known decoding strategy with at least 80% accuracy as measured by teacher observation. This goal is supported by three objectives. The first objective is that Student will use a decoding strategy when he encounters an unfamiliar or multisyllabic word. The second goal is that Student will chunk unfamiliar multisyllabic word into smaller parts. The third objective is that Student will improve his recognition of high frequency words by 10 words per month. [Ex. 7]

60. The November 2017 IEP again called for a minimum of 600 minutes a week in the special education resource room and a maximum of 1250 minutes in the general education classroom. [Ex. 7]

## CONCLUSION

In the instant matter, like in most due process hearings, a number of witnesses testified and there were numerous exhibits offered and admitted into evidence. I have reviewed and considered all that is contained in the exhibits and the transcripts of the hearing in deciding this matter.

*Did the District Provide FAPE to Student particularly in relationship to his reading needs including the provision of phonics instruction?*

Petitioner T.W. filed her complaint alleging that the District failed to provide phonics education to her son as he required. At the beginning of the hearing, Petitioner indicated that this issue has been resolved and therefore it was unnecessary to move forward.

*Did the District address the unique educational and behavioral needs of Student by developing, reviewing, and revising an IEP consistent with 34 CFR 300.114 and 300.320 through 300.324?*

The District properly convened an IEP team to evaluate Student. The IEP team consisted of the appropriate individuals as required by the regulations. The individuals such as Jose Garcia and Andreea Frew were individuals who had personal experience

working with Student's needs.

The evidence presented demonstrates that the District has been using methodology and programs such as System 44 that provide instruction in phonetics, decoding, reading and writing. Student's reading has improved demonstrating that the District has used effective intervention systems to address Student's struggles with reading. However, Student has and continues to have a significant deficit in grade level reading that is now impacting his abilities in his other academic areas.

The IEP goals were developed to address Student's deficits and to allow for growth. During the initial evaluation it was determined that Student was significantly below grade level. The reading goal determined was a goal that Student was likely to be able to reach in one school year.

Student was in the third month of the second grade but was only reading at Level D according to the Fountas and Pinnell benchmark assessment. The reading goal developed was that by the third month of the third grade, Student would be reading at a Level G or fifth month of the first grade. There does not appear to have been any discussion as to how if possible services could have been given to Student to decrease the grade level gap. Services such as extended school year, perhaps reading skills over the summer. There was no evidence presented that the District considered any other options beyond the limited focus of "what can child reach in a school year". Over the next couple of IEPs, Student's reading goals continued to allow for growth in reading, but the goals always reflected that Student would remain below grade level in reading. This grade level deficit began to affect Student's academic performance in other classes particularly math. The District did properly include goals to address Student's mathematic deficits once presented. But without any specific steps to bring Student's reading to grade level, Student will continue to struggle in his other academic classes.

Ms. Kissel testified that Student can achieve grade level in her opinion. She testified that this is likely to take more than one school year to accomplish. *Endrew F* requires that an educational program be reasonably calculated to enable a child to make progress appropriate considering the child's circumstances. I find that the District's academic goals do allow for Student to make progress in the limited short-term. But the District's actions in limiting the reading goals to one academic school year's growth has resulted in Student's additional academic areas of need. The continued two grade level reading deficit has resulted in additional needs for Student.

When the District began working with Student he was in the third grade reading at below first grade level. He is currently in the fourth grade and reading at a second-grade level. There has been no evidence presented that the District ever considered a plan to address the grade level discrepancy-- a plan to close the gap. Maintaining the

grade level deficit is not sufficient under the *Andrew F* standard. The goals created in the IEP are appropriate in that Student is likely to achieve the goals within one academic year and calls for growth. Student has continued to make progress on the goals. Student's reading has improved. The problem is that he is still reading below grade level and this is now impacting his other academic areas. As long as Student is reading below grade level, he will always struggle with the reading portion of his other classes.

Reading is an essential skill that affects all other aspects of any student's academic performance. It is unclear from the evidence presented, if the District ever had a serious discussion regarding a plan or services that would help to close Student's grade level gap such as perhaps the appropriateness of extended school year services to address Student's reading deficits. The Michigan Administrative Rules provides that in considering extended school year services, the individualized education program team shall do all of the following:

- (a) Determine if a student's current annual goals address 1 or more skills that need extended school year services. For any identified annual goal, the individualized education program team shall consider all of the following:
  - (i) Data that indicate that in the identified annual goal there is a potential for regression of skills beyond a reasonable period of recoupment.
  - (ii) Data regarding the nature or severity of the disability of the student that indicates that there is a need to provide services in the identified annual goal during breaks in the school year.
  - (iii) Information that indicates that in the identified annual goal the student is at a critical stage of learning or in a critical area of learning where failure to provide a service beyond the normal school year will severely limit the student's capacity to acquire essential skills. MARSE R 340.1721e(3)

From the evidence provided, the IEP team checked the box regarding extended school year services. Checking a box does not mean any meaningful discussion occurred. There has been no evidence presented that the District considered whether Student's two grade level deficit in reading was in a critical area of learning where failure to provide a service beyond the normal school year would severely limit Student's capacity to acquire the essential skill of reading.

It is clear from the evidence that Student's reading deficits have begun to affect

Student's performance in other academic areas. It is also clear from the evidence that a trigger for Student's behavior is work avoidance because of his capabilities. The evidence clearly demonstrated that Student's behaviors have escalated to the point of eclipsing Student's ability to make academic progress. At the time of the Due Process Complaint, Student's behavior had become a huge distraction and impediment to his ability to learn. The District properly attempted to conduct additional observations and evaluations using ISD staff. However, Petitioner T.W. refused to provide the required consents.

Based on the evidence submitted as well as the demeanor of the various parties and witnesses during the hearing, there has been a significant breakdown in the relationship between Petitioner T.W. and the District and its staff. Petitioner T.W. has become unreasonably suspicious of the District and its actions. Petitioner T.W. believes that the District only wanted to transfer her child when it requested to have ISD staff make observations. She does not believe that the District staff were looking to the ISD staff to make recommendations to the District's staff regarding Student's behavior based on their experience and expertise. There is nothing in the record to support this belief of Petitioner T.W.

A second instance of Petitioner's unreasonable actions is when she secretly hid a recording device on Student. Petitioner's action demonstrates a deliberate invasion of the privacy of the other students in the District as well as the staff. It was Petitioner T.W.'s actions that directly caused Student's most significant melt-down when the recording device was discovered. A direct result of Student's fear or concern about Petitioner T.W.'s reaction.

For Student to succeed, it is essential that Petitioner T.W. and District staff work as partners. They must work together to understand Student's needs and design an IEP to meet those needs. Petitioner T.W.'s unreasonable beliefs and actions towards the staff are a direct cause of some of Student's behaviors.

I find that the District's actions in moving Student from Spring Valley to Northeastern were appropriate. One of Student's target behavior is work avoidance. Suspending him from school does nothing to address this behavior and perhaps may only be encouraging misbehavior. Keeping Student in school even if another building is most appropriate. Also, it is noted that based on the testimony from the Northeastern staff, Student is making considerable progress on his IEP goals.

*Did the District implement the discipline protections for Student pursuant to 34 CFR 300.530 through 300.536?*

Based on the evidence presented, I find that the District implemented the discipline protections for Student. In each incident, the District conducted a manifestation review.

The District offered additional educational services for Student. Student's FBA was revised, and additional supports and services were implemented. The FBAs completed by the District staff appear to be well written. They address Student's targeted behavior properly identifying the purposes of the behavior. The BIPs do not appear to address steps to teach new behaviors or modify/replace the current behaviors. The plans appear to be more directed to steps to keep behavior from escalating.

The District requested to conduct a new Comprehensive Evaluation and convene a new IEP team meeting to address the changing needs. Petitioner T.W. has refused to consent at this point in time.

Student's behavior has become a significant factor impeding his ability to access and make progress towards the general education curriculum. It is essential that updated evaluations are completed to determine Student's current needs.

*Did the District provide educational services to Student that would enable him to continue to participate in the general education curriculum although in another setting and to progress toward meeting the goals set out in Student's IEP consistent with 34 CFR 300.530(d)(1)?*

The District has established that rather than remove Student from his educational setting after the repeated behavioral incidents, Student was moved to a new school building. Student continued in the same educational placement and continued to receive the same related services in the new building. The evidence presented established that Student is making progress on the goals set out in his current IEP.

*Did the District respond appropriately to the alleged bullying of Student and Student's changing needs pursuant to 34 CFR 300.324(b)(1)(ii)(C)(D)(E)?*

There has been no evidence submitted to establish that Student was bullied by any other students. The evidence submitted has shown that Student was the physical aggressor in the incidents occurring at school. The District attempted to address Student's changing needs by requesting authorization to have additional staff observe and make recommendations.

The District appropriately responded to Student's changing needs by implementing social worker and psychologist services. The District has attempted to conduct a new Functional Behavior Assessment and a new Comprehensive Evaluation to identify any other changing needs. However, Petitioner has refused to consent to these additional evaluations. It is clear from the record that a new evaluation needs to be completed. Student's behavior has escalated significantly. Student's behavior is directly impacting his ability to access the curriculum. Student has the ability to reach grade level, however, his behavior is impacting his ability to focus on the academic goals and



continue to make progress.

*Did the District respond to disability-related behavior with a pattern of removals, including restraint/seclusion, rather than providing positive behavioral supports and interventions to Student consistent with 34 CFR 324(a)(2) and 300.320(a)(4)?*

The evidence presented in this case established that there was a single incident in which restraints were used on October 19, 2016. The evidence presented established that the staff involved had all been certified in CPI. The evidence has established that the District used a proper CPI technique and completed the required forms including contact with Petitioner T.W.

The evidence established that Student had been suspended from school many times. However, the District did properly convene MDRs and offered educational opportunities for Student to make-up any work.

The District updated the Functional Behavioral Assessment and revised the various safety and behavior plans as required. The District utilized positive behavioral supports in attempting to address Student's behavioral difficulties.

Additionally, the District requested to have specialized staff conduct observations and consult with the District's staff. Petitioner T.W. refused to consent to this. The District requested to conduct a new FBA and Comprehensive evaluation which the Petitioner T.W. refused to consent to. The District has been unable to complete the updated evaluations without Petitioner T.W.'s consent.

The evidence has established that over the last school year, Student's behavior has significantly changed. This change has limited his ability to make progress on his academic goals. To determine Student's current abilities and needs, new evaluations must be conducted. Student has the ability to be successful in the classroom but his behavior is currently negatively impacting his ability.

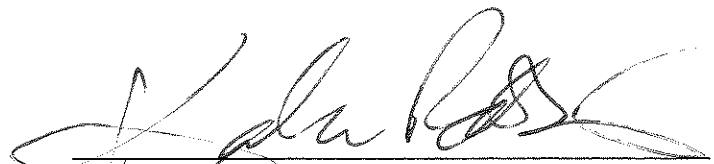
**ORDER**

**IT IS ORDERED:**

1. District shall retain an Independent Board-Certified Behavior Analyst (BCBA) to complete a Functional Behavioral Assessment (FBA) and develop a Behavioral Intervention Plan (BIP) within 30 days of this Order. The BCBA shall present the FBA and BIP to the IEP team and provide any necessary training to any IEP team member including Petitioner in the implementation of the BIP.
2. The District shall complete a new Comprehensive Multidisciplinary Evaluation to determine Student's current level and needs. The Comprehensive Multidisciplinary Evaluation shall be completed within 30 days of this evaluation.
3. Within 10 days of completion of the FBA, BIP and Comprehensive Multidisciplinary Evaluation, the District shall reconvene the IEP team to review the new information and make any adjustments to Student's IEP including review of the need for extended school year services and updated goals.
4. District will provide proof of compliance with this Order to the Michigan Department of Education in conformity with the form and content required by that agency, within 30 days of completion of the required actions.

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

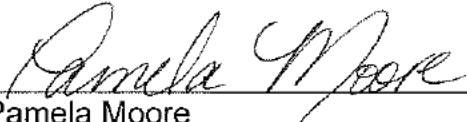
A party aggrieved by this decision may seek judicial review by filing an action in a court of competent jurisdiction within 90 days of the date of this order.



**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 21st day of February, 2018.

  
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