

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

Docket No.: 18-000201

**A.R.,
Petitioner**

Case No.: 18-00004

v

Agency: Education

**Sturgis Public Schools,
Respondent**

Case Type: ED Sp Ed Regular

Filing Type: Appeal

**Issued and entered
this 30th day of October 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 January 3, 2018, Petitioner filed a Due Process Hearing Request the Michigan Department of Education (MDE). MDE forwarded the Due Process Hearing Request to the Michigan Administrative Hearing System for hearing. It was assigned to Administrative Law Judge (ALJ) Kandra Robbins. An Order Scheduling a Prehearing Conference for January 29, 2018 was issued on January 9, 2018. On February 5, 2018, Petitioner's counsel filed a Motion for co-counsel to be admitted as *Pro Hac Vice*. On February 9, 2018, an Order for Admission *Pro Hac Vice* was entered.

On January 18, 2018, Respondent St. Joseph Intermediate School District and its Board of Directors (ISD) filed a Motion to Dismiss because the Due Process Complaint failed to state a claim against the ISD. On January 24, 2018, Petitioner filed a Request to Adjourn the Prehearing Conference scheduled for January 29, 2018, as counsel was out of the country.

On January 26, 2018, an Order Granting the Request for Adjournment and Scheduling Oral Argument on the Motion was issued. Respondent Sturgis Public Schools and its Board of Education (District) filed a Motion to Dismiss. Although the Motion was emailed to MAHS on January 24, 2018, it was not filed until January 27, 2018.

On February 7, 2018, Petitioner filed a Response to Respondent ISD's Motion to Dismiss. A response was not filed regarding Respondent District's Motion to Dismiss. On February 9, 2018, Oral Argument was convened. It was noticed that the Respondent District's Motion was not included in the January 26, 2018 Order. Parties were given an additional opportunity to file written closing arguments/briefs on both motions. The Pre-hearing Conference was continued to March 9, 2018.

On February 23, 2018, Respondent District filed its closing arguments/response brief. On February 23, 2018, Respondent ISD filed its closing arguments/response brief. On February 28, 2018, Petitioner filed its final response brief.

On March 6, 2018, an Order Regarding the Respondents Motion to Dismiss was entered. Respondent ISD's Motion to Dismiss was granted. As to Respondent District's Motion to Dismiss for the two-year statute of limitations, the undersigned ALJ found that the Petitioner filed the Due Process Complaint in this matter within two-years of the date the parent or agency *knew or should have known* about the alleged action. 20 USC 1415(f)(3)(C). This ALJ specifically found that the Petitioner in this matter had no reason to know that Petitioner only had the language knowledge or ability in the 5th percentile. This ALJ specifically found that the Independent Education Evaluation completed by Dr. Peter Isquith in September 2016 was the first notification that Petitioner had concerning his significant language deficit. Based on the language of IDEA, Petitioner had two years from September 2016 when he received notification of his language deficit to file his Due Process Hearing Request. In this case, he filed the request in January 2018 approximately 9 months prior to the expiration of the two-year time limitation. Because of these findings, Respondent's Motion for Dismissal based on the statute of limitations was denied¹. Respondent District's Motion for Dismissal for claims outside of IDEA was granted including all claims under Title V of the Rehabilitation Act of 1973 (§ 504); the Americans with Disabilities Act (ADA); and Persons with Disabilities Civil Rights Act.

During a Pre-hearing Conference held on March 9, 2018, the dates for the hearing were selected as well as the deadlines for filing witness and exhibit lists. On May 4, 2018, the parties contacted the ALJ. One of the attorneys had a family emergency necessitating the cancelation of the hearing scheduled to begin on May 7, 2018. During a Pre-hearing Conference held on May 29, 2018, it was determined that the hearing would be held for five days beginning on August 20, 2018.

On June 15, 2018, Respondent District filed another Motion to Dismiss because Petitioner had received a high school diploma on June 7, 2018. On June 25, 2018, an Order Regarding Briefing Schedule and Scheduling Oral Argument was issued. On July 10, 2018, Petitioner filed a Response to the Motion to Dismiss. On July 17, 2018,

¹ A lengthier discussion is contained in the Order Regarding Respondents Motion to Dismiss issued on March 6, 2018.

Respondent filed a Reply to the Response. On July 24, 2018, an Order Denying Respondent's Motion to Dismiss was entered.

On August 20, 2018, the hearing in this matter was convened. Petitioner, Attorneys Caroline Jackson, Mark A. Cody, and Mitchell Sickon appeared on behalf of Petitioner. Attorney Vickie Coe and Assistant Superintendent Nicole Airgood appeared on behalf of Respondent. The proceeding interpreters for the hearing were Mr. David Stuckless and Ms. Jamie Rix. Additionally, Mr. John Stuckless served as table interpreter for Petitioners². The hearing continued August 21, August 22, and concluded on August 23, 2018.

The following individuals testified in this matter:

1. Mel Whalen³, PhD
2. Petitioner
3. Peter Isquith⁴, PhD
4. C.H⁵., Petitioner's mother
5. Melissa Frye, Special Education Teacher
6. Jessica Bucklin, School Improvement and Curriculum Consultant
7. Susan Herald, Teacher, Michigan School for Deaf
8. Mary Bogart, ELA Teacher
9. Peter Larr, Social Studies Teacher
10. Narissa Ross, Special Education Teacher
11. Nicole Airgood, Assistant Superintendent

² Mr. John Stuckless only participated in the first three days of the hearing. Petitioner's Counsel uses ASL and was able to communicate with her client without the additional table interpreter.

³ Dr. Whalen has two PhDs in Clinical Psychology and Communication, two master's degrees in clinical psychology and Sign linguistics, and a BA.

⁴ Dr. Isquith has a PhD, MA and BA in Speech and Hearing Sciences.

⁵ Initials are being used to protect the privacy of Petitioner

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

1. Petitioner Exhibits 1 through 12 were not offered.
2. Petitioner Exhibit 13 is a March 4, 2013 Individualized Education Program (IEP).
3. Petitioner Exhibit 14 is a February 2, 2014 IEP.
4. Petitioner Exhibit 15 was admitted as Respondent Exhibit 4.
5. Petitioner Exhibit 16 is a February 16, 2016 IEP.
6. Petitioner Exhibit 17 was admitted as Respondent Exhibit 8.
7. Petitioner Exhibit 18 is a March 20, 2017 IEP.
8. Petitioner Exhibit 19 is a December 20, 2017 IEP.
9. Petitioners Exhibits 20 through 43 were not offered.
10. Petitioner Exhibit 44 is a Sturgis Public Schools IEP Progress Report, dated January 29, 2014.
11. Petitioner Exhibits 45 through 47 were not offered.
12. Petitioner Exhibit 48 is Sturgis Public Schools IEP Progress Report, dated February 4, 2015.
13. Petitioner Exhibits 49 through 55 were not offered⁶.
14. Petitioner Exhibit 56 is a Psycho-Educational Evaluation Report by Todd VandenAkker, Ed.S., dated April 16, 2016.
15. Petitioner Exhibits 57 through 59 were not offered.
16. Petitioner Exhibit 60 is a Review of Existing Evaluation Data (REED) and Evaluation Plan, dated February 1, 2016⁷.
17. Petitioner Exhibits 61 through 64 were not offered.

⁶ Petitioner's Exhibit 51 was admitted as Respondent's Exhibit 17.

⁷ This document was admitted as Respondent's Exhibit 26.

18. Petitioner Exhibit 65 is Report of Neuropsychological Consultation by Peter K. Isquith, Ph.D., dated September 13, 2016.
19. Petitioner Exhibit 66 is a SouthWest Collegiate Institute for Deaf information sheets.
20. Petitioner Exhibits 67 through 71 were not offered.
21. Petitioner Exhibit 72 is the Curriculum Vitae for Peter K. Isquith, Ph.D.
22. Petitioner Exhibit 73 is the Curriculum Vitae for Mel Whalen, Ph.D., LP
23. Petitioner Exhibits 74 through 82 were not offered.
24. Petitioner Exhibit 83 is admissions information for SouthWest Collegiate Institute for Deaf.
25. Petitioner Exhibits 84 through 86 were not offered.
26. Petitioner Exhibit 87 is Howard College SouthWest Collegiate Institute for Deaf communications information.

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

1. Respondent Exhibits 1 and 2 were not offered.
2. Respondent Exhibit 3 is a February 26, 2014 IEP.
3. Respondent Exhibit 4 is a February 17, 2015 IEP.
4. Respondent Exhibit 5 was not offered.
5. Respondent Exhibit 6 is 2015/2016 Plan notes.
6. Respondent Exhibit 7 is a February 16, 2016 IEP.
7. Respondent Exhibits 8 is a May 10, 2016 IEP.
8. Respondent Exhibit 9 is a June 7, 2016 IEP amendment.
9. Respondent Exhibits 10 through 14 were not offered.

10. Respondent Exhibit 15 is a February 4, 2015 Progress Report.
11. Respondent Exhibit 16 is a June 9, 2015 Progress Report.
12. Respondent Exhibit 17 is a February 3, 2016 Progress Report.
13. Respondent Exhibit 18 is an April 1, 2016 Progress Report.
14. Respondent Exhibit 19 is a June 2, 2016 Progress Report.
15. Respondent Exhibit 20 is an October 2016 Scholastic Record.
16. Respondent Exhibit 21 is a Michigan School for the Deaf Transcript.
17. Respondent Exhibit 22 is a Michigan School for the Deaf 2016/2017 School Year, Semester 2 Report.
18. Respondent Exhibit 23 was not offered.
19. Respondent Exhibit 24 is a Michigan School for the Deaf American Sign Language Proficiency Exam.
20. Respondent Exhibit 25 was not offered.
21. Respondent Exhibit 26 is a REED and Evaluation Plan, dated February 1, 2016.
22. Respondent Exhibit 27 was not offered.
23. Respondent Exhibit 28 was not offered.
24. Respondent Exhibit 29 is Audiograms from Berrien County Hearing Impaired Program.
25. Respondent Exhibit 30 is a Hearing-Impaired MET from Michigan School for the Deaf.
26. Respondent Exhibit 31 was not offered.
27. Respondent Exhibit 32 is email correspondence, dated October 13, 2014.

28. Respondent Exhibit 33 is email correspondence, dated October 17, 2014 through October 20, 2014.
29. Respondent Exhibits 34 and 35 were not offered.
30. Respondent Exhibit 36 is email correspondence, dated February 10, 2015 through February 12, 2015.
31. Respondent Exhibits 37 through 42 were not offered.
32. Respondent Exhibit 43 is email correspondence, dated May 2012 through August 2012.
33. Respondent Exhibits 44 and 45 were not offered.
34. Respondent Exhibit 46 is email correspondence, dated January 1, 2016 through January 13, 2016.
35. Respondent Exhibit 47 is email correspondence, dated February 5, 2016.
36. Respondent Exhibit 48 is email correspondence, dated January 7, 2016 through February 8, 2016.
37. Respondent Exhibit 49 was not offered.
38. Respondent Exhibit 50 is email correspondence dated March 7, 2016.
39. Respondent Exhibit 51 is email correspondence, dated March 31, 2016 through April 1, 2016.
40. Respondent Exhibit 52 is email correspondence, dated April 18, 2016.
41. Respondent Exhibit 53 is email correspondence, dated May 3, 2016.
42. Respondent Exhibit 54 was not offered.
43. Respondent Exhibit 55 is email correspondence from Beth Rice, MDE.
44. Respondent Exhibit 56 is email correspondence, dated September 10, 2012.
45. Respondent Exhibit 57 is an Interpreter Job Posting information.

46. Respondent Exhibit 58 is Invoices and correspondence with Virtual Interpreter Agency.
47. Respondent Exhibit 59 is Virtual Interpreter Contract, dated March 30, 2016.
48. Respondent Exhibits 60 through 63 were not offered.
49. Respondent Exhibit 64 is a letter from the Office of Civil Rights, dated January 30, 2013.
50. Respondent Exhibit 65 was not offered.
51. Respondent Exhibit 66 is a letter from Access Education Advocates and Associates, dated March 15, 2016.
52. Respondent Exhibits 67 through 70 were not offered.
53. Respondent Exhibit 71 is the credentials for Janice Braun.
54. Respondent Exhibit 72 is the credentials for Brittani Volstromer.
55. Respondent Exhibit 73 is a Progress Report, dated January 29, 2014.
56. Respondent Exhibit 74 is a Progress Report, dated February 4, 2015.
57. Respondent Exhibit 75 is an iReady Assessment, dated 2014-2016.
58. Respondent Exhibit 76 is a Curriculum Vitae for Narissa Ross.
59. Respondent Exhibit 77 is a Curriculum Vitae for Melissa Timm Frye.
60. Respondent Exhibits 78 through 81 were not offered.
61. Respondent Exhibit 82 is Sturgis Public Schools time sheets.
62. Respondent Exhibit 83 is a Sturgis Public Schools earning record for employee Jessica Hohn.
63. Respondent Exhibit 84 is a Sturgis Public Schools earning record for employee Janice Braun.
64. Respondent Exhibit 85 is a Sturgis Public Schools earning record for employee Gayle Cunningham.

65. Respondent Exhibit 86 is Sturgis Public Schools earning record for employee Brittani Volstromer.
66. Respondent Exhibit 87 is a letter and certificate from Stephanie Clark regarding ASL summer class for the 2015/2016 school year.
67. Respondent Exhibit 88 is Petitioner's report card for the 2015/2016 school year.
68. Respondent Exhibit 89 is Summary time sheet for Jessica Hohn.
69. Respondent Exhibit 90 is a Summary time sheet for Danielle Dunlap.
70. Respondent Exhibit 91 was not offered.
71. Respondent Exhibit 92 is a letter and subpoena for Dr. Whalen.

At the end of the hearing, it was determined that the parties would be permitted to file written briefs and closing arguments and reply briefs. Each party filed a timely closing argument and reply brief.

ISSUE AND APPLICABLE LAW

The issue in this matter is whether Petitioner was denied a free appropriate public education particularly as it relates to language.

The Petitioner has the burden of persuasion on all issues 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).

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 define “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.

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 child to make progress appropriate in light of the child's circumstances. *Andrew F.* 137 S. Ct. 988.

The IEP team for a child who is deaf or hearing-impaired must "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." 34 CFR 300.324 (a)(2)(iv). OSERS has stated that "any setting that does not meet the communication and related needs of a child who is deaf does not allow for the provision of [FAPE] and cannot be considered the LRE for that child."

Additionally, the Code of Federal Regulations provides for determining educational placement as:

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that-

(a) The placement decision-

- (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
- (2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;

(b) The child's placement-

- (1) Is determined at least annually;
- (2) Is based on the child's IEP; and
- (3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. 34 CFR §300.116

Additionally, the Regulations provide that 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 § 300.114(a)(2)

FINDINGS OF FACT

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

Petitioner is currently 19 years old. Petitioner was diagnosed with bilateral sensorineural loss at 18 months of age. He was initially fitted with bilateral hearing aids. At age 6, he had his first cochlear implant surgery. A second cochlear implant occurred in 2014. Based on audiogram from March 2016, the right implant aided with hearing, brings Petitioner's hearing to the normal to borderline-normal range with speech threshold falling within the range of a mild hearing loss. Petitioner has complained that the left implant has caused headaches and discomfort and, therefore, Petitioner has chosen not to use it. His left ear shows a severe to profound hearing loss. Petitioner also has Type I Diabetes. [Pet. Ex. 56]

Petitioner's primary mode of communication is ASL although he does have some vocal ability.

Petitioner has received special education services under the Category of Deaf and Hard of Hearing, formerly Hearing Impaired. Petitioner attended Sturgis Public Schools from the time he began school until his junior year, the 2016/2017 school year.

The Michigan School for the Deaf is a public school located in Flint, Michigan operated by the State Board of Education and the Michigan Department of Education. It is the only school for the deaf located within the State of Michigan. [MCL 393.21 and MCL 393.1]

The Michigan School for the Deaf is a required educational placement that must be considered on the total continuum of educational placements for every deaf or hard of hearing student within the State of Michigan. [MARSE R 340.1721e(5)]

In 2012, Petitioner's mother filed a Due Process Complaint with the MDE alleging that the District was failing to provide a sign language interpreter for Petitioner. This matter was resolved by the parties and did not go to an administrative hearing.

On March 4, 2014, an IEP team meeting was held. Petitioner was in the 8th grade at the time. This IEP noted that in 2010, the MET indicated that Petitioner's permanent hearing loss continues to be the main factor that impacts his progress in the general education curriculum. It noted that Petitioner continued to have speech and language difficulties. It noted that Petitioner continued to show difficulty retaining and recalling definitions for curriculum vocabulary. Based on standards testing in the winter of 2013, Petitioner was in the 14th percentile in math, the 1st percentile in reading; and the 17th percentile in language usage. [Pet. Ex. 13]

The IEP indicated that due to Petitioner's hearing impairment, he needed an interpreter, an FM system, and material read aloud to access information. This IEP identified English Language Arts goals, self-advocacy goal, and mathematic goal. It included several supplementary aids and services including all instruction provided in sign language and the use of an educational interpreter fluent in sign language. [Pet. Ex. 13]

The IEP called for speech and language services; a hearing-impaired teacher consultant; co-taught classes; and resource room for 5-10 hours per week. [Pet. Ex. 13]

This IEP found that no extended school year services were needed. [Pet. Ex. 13]

On February 26, 2014, an IEP team meeting was held. At the time, Petitioner was in the 9th grade. The IEP noted that Petitioner is a wonderful young man with numerous friends. As a strength, the IEP team indicated that Petitioner can identify words that he does not know the meaning of; knows where it is appropriate to use capital letters; and can perform basic mathematic operations on paper as well as more complex problems with a calculator. [Pet. Ex. 14]

During this IEP, Petitioner's mother raised concerns about Petitioner keeping up with his classes, particularly in the area of vocabulary; whether Petitioner is comprehending the materials; and Petitioner's use of tools building his self-confidence. [Pet. Ex. 14]

The IEP indicated that Petitioner's reading was at the 2nd grade level. His overall language arts score placed him in the 3rd grade level and his mathematics score was also at the 3rd grade level. At the time of this IEP, Petitioner had earned 4 credits toward graduation. This IEP noted that Petitioner has difficulty understanding inferential information and needed to improve his semantic skills to aid progress in the curriculum. As to expressive language, the IEP indicates that Petitioner requires verbal cues to include morphological markers at the sentence level during structured conversational tasks. [Pet. Ex. 14]

This IEP team developed four English language arts goals to address adapting speech to a variety of contexts and tests demonstrating command of formal English; apply

knowledge of language to understand how language functions in different contexts to make effective choices for meaning or style and to comprehend more fully when reading or listening; write arguments to support claims in an analysis of substantive topics or texts; and to determine a theme or central idea of a text and analyze in detail its development over the course of the text. The IEP team included a goal to develop self-advocacy skills; and two math goals. [Pet. Ex. 14]

The IEP included several supplementary aids and services including that directions would be provided in sign language and that an educational interpreter that is fluent in sign language would be present. The IEP also provided that Petitioner would receive speech and language services, hearing-impaired teacher consultant services and resource room services. Again, no extended school year services were determined to be necessary. [Pet. Ex. 14]

On February 17, 2015, an IEP team convened to develop a new IEP for Petitioner. At this time, Petitioner was in the 10th grade. Petitioner remained eligible for special education as a student with a hearing impairment. This team included the Petitioner, his parents, a district representative, a general education teacher, a special education teacher, a speech and language pathologist, and a hearing-impaired teacher consultant. [Resp. Ex. 4]

As to strengths, this IEP noted that for reading, Petitioner enjoys whole class discussions as well as when materials are read to him. For written expression, it was noted that Petitioner knows that he needs assistance when it comes to writing. Strengths for math were indicated as Petitioner is able to gain new concepts quickly when he takes the time to participate in discussion and asks questions to clarify any confusion he may have. For communication, it was stated that Petitioner works well within the small group speech setting. He gets along with peers and displays a great sense of humor. Parents raised concerns about Petitioner being successful in school and after discussion with IEP team, agreed that Petitioner should be held more accountable when it comes to refusing to do schoolwork. [Resp. Ex. 4]

As to most recent evaluations for communication, the IEP team noted that through informal evaluation and therapy progress, Petitioner continued to show difficulties understanding and using curriculum vocabulary, answering inferential questions, understanding figurative language, and expanding on his thoughts and ideas. [Resp. Ex. 4]

Despite the listed strengths, Petitioner's standardized testing results indicated that he was at Level 3 overall in math; reading was at Level 1 overall, with phonics at Kindergarten level and vocabulary at 3 level; reading comprehension was at level 1. [Resp. Ex. 4]

Petitioner used a FM system as well as his cochlear implant to amplify sound. An assistant who signs was being utilized while the District tried to locate a certified/qualified interpreter. [Resp. Ex. 4]

This IEP consisted of four English Language Arts goals. The first goal is that during a variety of activities, given visual and verbal cues, Petitioner will demonstrate increased understanding and use of academic vocabulary as well as answer comprehension questions as measured by therapist observations. The second goal was to increase his writing skills by constructing a complex thesis statement and using details to support his ideas on a given teacher assessment or writing sample. The third language goal was to increase his basic reading skills by correctly using new vocabulary terms in context given teacher assessment. The fourth goal is a reading goal specifically that Petitioner will increase his reading comprehension skills by identifying theme of a given story. [Resp. Ex. 4]

The first language goal is exactly the same as the 2014 IEP.

The second area addressed in the IEP goals is for Petitioner to develop self-advocacy skills. Again, this goal appears to be consistent with the goal from 2014. [Resp. Ex. 4]

The 2015 IEP also included two mathematic goals. The first was that Petitioner would be able to write an equation and find its solution when provided an algebraic scenario. The final goal was that Petitioner would be able to prove theorems about lines and angles on a given teacher assessment. [Resp. Ex. 4]

The IEP included several supplementary aids and services including that directions would be provided using sign language and an educational interpreter that is fluent in sign language. [Resp. Ex. 4]

This IEP called for speech and language services as well as the hearing-impaired teacher consultant services. Petitioner was placed in general education with resource room support. Extended school year services were not deemed needed noting that Petitioner was on track to graduate on time and he was making adequate progress on his goals and objectives. [Resp. Ex. 4]

On February 1, 2016, at the request of Petitioner's mother, a Review of Existing Evaluation Data and Evaluation Plan meeting was held. Petitioner's mother raised concerns about Petitioner's reading level and about having access to language in the classroom. After reviewing Petitioner's current standardized assessments and teacher input, the Team determined that no additional testing was necessary. [Resp. Ex. 26]

On February 16, 2016, an IEP team was convened. This team consisted of Petitioner, his mother, a district representative, a general education teacher, a special education

teacher, and the hearing-impaired teacher consultant. Parent's concerns at this IEP included the availability of a sign language interpreter and extended school year help. The 2016 MET summary as noted in the IEP indicated that Petitioner's hearing loss affected his basic reading, comprehension, writing, and math skills. [Resp. Ex. 7]

This IEP again indicated that Student's current assessments placed his phonics at the Kindergarten level, vocabulary at the 3 level and comprehension at 1 level. His overall reading remained at level 1. His overall math level remained at level 1. [Resp. Ex. 7]

This IEP noted no behavior concerns and that Petitioner communicates verbally as well as through sign language indicating that he utilizes an assistant throughout the day. [Resp. Ex. 7]

This IEP noted that due to Petitioner's hearing impairment, he struggles with vocabulary development, comprehending grade level materials, and grade level writing tasks. The IEP noted that Petitioner did not have the sign vocabulary to maximize the use of an interpreter. The IEP also noted that Petitioner is unaware that he missed pertinent information. [Resp. Ex. 7]

This IEP included many supplementary aids and services including directions provided using sign language and an educational interpreter that is fluent in sign language. [Resp. Ex. 7]

The February 2016 IEP included four English Language Arts goals. The first goal remained the same as in the last two IEPs: during a variety of activities given visual and verbal cues, Petitioner will demonstrate increased understanding and use of academic vocabulary, as well as answer comprehension questions. The second goal is that when given a writing assessment, Petitioner will increase his writing skills by constructing well written introduction and conclusion paragraphs as well as using enough details to support his ideas. The third goal is that Petitioner will increase his basic reading skills by keeping track of his unknown words as well as using his resources to determine the meaning of an unknown word. It was noted that increasing Petitioner's basic reading skills may allow him to be more successful in his future career choice as well as post-secondary education. The fourth goal is to increase his reading comprehension skills by summarizing what he has read as well as using details from the reading selection to support his ideas. The IEP had one math goal: Petitioner will increase his math skills by properly adding and subtracting fractions. [Resp. Ex. 7]

The IEP contained several supplementary aids and services including directions provided in sign language and an educational interpreter that is fluent in sign language. The IEP determined that Petitioner would need to continue speech and language services and teacher consultant services as well as resource room support. Extended school year services were again determined not needed noting that there was not

enough data to support regression and/or recoupment difficulties for reading, writing, and signing. [Resp. Ex. 7]

The IEP noted that Petitioner's behavior was not a concern. Additionally, it noted that an assistant who signed would be utilized until an interpreter could be located. [Resp. Ex. 7]

On April 16, 2016, Todd VandenAkker, Ed.S. completed a Psycho-Educational Evaluation Report. As part of the evaluation, Mr. VandenAkker interviewed Petitioner's mother, teachers and Petitioner. He also administered the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV) and the Kaufman Tests of Educational Achievement-Third Edition (KTEA-3). [Pet. Ex. 56]

Mr. VandenAkker found that Petitioner is a very bright young man who demonstrated excellent nonverbal reasoning and visual problem-solving ability for his age along with strong rote visual processing speed. However, Petitioner is well below grade level in both math and reading. Petitioner's reading skills appeared to be quite basic and problematic with respect to enabling him to succeed in a high school level curriculum where language demands are high. [Pet. Ex. 56]

Mr. VandenAkker found that Petitioner did not appear to demonstrate a learning disability, but his skills reflect more his language limitations stemming from the hearing loss and apparent sparse exposure to and/or instruction in sign language to supplement auditory input. [Pet. Ex. 56]

Mr. VandenAkker recommended that it was important to continue providing language and literacy intervention to bolster Petitioner's expressive and written vocabulary. Provision of a qualified sign language interpreter or instructor would be paramount. Mr. VandenAkker identified alternative means of improving Petitioner's sign language skills such as specialized software, sign language class, finding a native signing deaf peer or adult, and joining a deaf social group. [Pet. Ex. 56]

Another IEP team meeting was held on May 10, 2016. This IEP team included Petitioner, his mother, a lay advocate, a district representative, a general education teacher, a special education teacher, the hearing-impaired teacher consultant, Michigan Rehabilitation Services representative, school psychologist, and speech and language pathologist. [Resp. Ex. 8]

Petitioner's mother requested evaluations resulting in a REED dated April 25, 2016. This included assessments for Functional Listening Evaluation and a standardized, comprehensive, communication assessment. An updated audiogram indicated that Petitioner had 61% correct words in quiet on the right and 58% of words correct in noise as noted in the May 2016 IEP. [Resp. Ex. 8]

Petitioner's mother's noted concerns were lack of sign <language ability>; lack of interpreter; lack of an appropriate accommodations; lack of an ASL environment; concern in the achievement gap when looking at intellect and academic achievement. [Resp. Ex. 8]

The May 2016 IEP noted that Petitioner's current reading level remained at the first-grade level overall; phonic remained at the Kindergarten level; comprehension remained at grade level 3 and vocabulary remained at grade level 2. Petitioner's math level remained overall at grade level 3. [Resp. Ex. 8]

The Test of Auditory Processing Skills-3 (TAPS-3) was administered. This test assesses what is understood of what is heard. The results demonstrate that Petitioner lacks to ability to synthesize a word from given phonemes. His sentence memory was poor after four words in length. Auditory comprehension was average but auditory reasoning was poor. Auditory reasoning is related to inferences and abstractions. Petitioner was unable to imply meaning, infer or make logical conclusions for information that was presented auditorily. [Resp. Ex. 8]

The Test of Auditory Comprehension (TACL-4) was administered. Although this test is not valid with Petitioner because of his age versus the test's norm, it allowed the team to gain some information. Petitioner was below average in all areas. [Resp. Ex. 8]

With the cochlear implant, Petitioner was reported to hear 84% of speech sounds in a quiet setting. In a noisy setting, this decreased to 24%. With the cochlear implant and FM system, this increased to 88%. [Resp. Ex. 8]

The May 2016 IEP continued the five goals from the February 2016 IEP and added a goal regarding ASL usage. The added goal is that Petitioner will demonstrate increased ASL discourse during hearing support sessions. Another added goal is that Petitioner will demonstrate use of at least three new strategies to bridge what he does understand in lecture/conversation to help him figure out what he has missed based on teacher assessment. [Resp. Ex. 8]

The May IEP continued the same supplementary aids and services. [Resp. Ex. 8]

The May IEP continued speech and language services, teacher consultant services and resource room services. Extended School Years services were discussed but no decision was made. [Resp. Ex. 8]

The IEP also indicated that the team failed to address all of Petitioner's mother's concerns at the time. The IEP noted that the IEP would be reconvened because of time constraints. [Resp. Ex. 8]

On June 7, 2016, the IEP was amended to include Extended School Year Services consisting of 48 hours of Sign Language Instruction. The IEP team noted that Petitioner would benefit from addressing sign language receptive and expressive skills because Petitioner does not yet have the signing ability to appropriately access academics through an interpreter. [Resp. Ex. 9]

Although the IEP team in 2016 found that Petitioner lacked the signing ability to access academics, the previous three IEPs found no need for any sign language instruction or extended school year services.

On August 23, 2016, another IEP meeting was convened. This time the purpose was to consider placement at the Michigan School for the Deaf. Student began attending the Michigan School for the Deaf in the fall of 2016. Student's sign language proficiency level at the time of his enrollment was not presented at the hearing.

On September 13, 2016, Peter K. Isquith, PhD., completed a Neuropsychological Consultation Report concerning Petitioner. Dr. Isquith noted that Petitioner was educated in the inclusion setting in his home school district of Sturgis from preschool through the 11th grade. Petitioner then transferred to the Michigan School for the Deaf (MSD). [Pet. Ex. 65]

Petitioner communicated in the first several years of his life via speech and listening only, then signs in an English word order were introduced at home and in school. Access to sign communication, particularly good language models had been sporadic. Since beginning at the MSD, Petitioner began acquiring American Sign Language rapidly. Dr. Isquith found that Petitioner demonstrated code switching between using ASL with his Deaf friends and in classes at MSD, using signs in English order with speech with his family, and using speech and listening/speechreading with his hearing friends at home. His language development and language related academic skills have always been well below expectations despite above average measured cognitive ability. Petitioner's language and language-related functioning was below expectations. [Pet. Ex. 65]

As part of the evaluation, Dr. Isquith completed a clinical interview and review of records including IEPs and prior evaluations; the Wechsler Adult Intelligence Scale-fourth edition (WAIS-IV); Rey 15, RDS; Wide Range Assessment of Memory and Learning, second edition (WRAML-2); Rey-Osterrieth Complex Figure-Standard Administration; Grooved Pegboard; Timed Motor Exam; and Academic Achievement Battery (AAB). [Pet. Ex. 65]

Petitioner has had few formal assessments. He had some language development assessment information at age 4 and again at age 8 that documented limited language

skills. The first formal academic assessment was reported at age 13. The second academic assessment and the first known cognitive assessment was not completed until April 2016 when Petitioner was 17. [Pet. Ex. 65]

Petitioner demonstrated ongoing deficits in language and language-related academic skills. Petitioner's language knowledge and competence are limited. Petitioner's knowledge of language structure, vocabulary and information base remain areas of deficit. Petitioner's knowledge of the world, his knowledge of words to describe his thoughts and experiences and his knowledge of basic language structure or how to put words/signs into meaningful sentence remains limited. [Pet. Ex. 65]

Petitioner demonstrated limited understanding of the structure of English; communicating in English using partial sentences that are missing elements of syntax such as prepositions and articles and are missing grammatical markers such as appropriate tense markers. [Pet. Ex. 65]

Petitioner's written language skills are impaired. His basic reading skills were below the 1st percentile with somewhat better understanding of reading material at the 10th percentile. Writing was at the 5th percentile and listening was at the first percentile for age appropriate academic material. Math is related to language development and Petitioner's access to math instruction was likely impaired by limited communication as his math skills were measured below the 10th percentile. [Pet. Ex. 65]

Petitioner's hearing loss substantially interfered with his ability to develop spoken language and the limited and sporadic exposure to an accessible visual language further limited his language competence. Secondarily, the limited exposure to language interfered with development of language-related academic skills including reading, writing, math and knowledge base. [Pet. Ex. 65]

Despite the early recognition of the need for sign instruction and instruction in sign, the quality and availability of sign models were highly variable and often limited including lengthy periods of time when there was no direct instruction in sign or interpreting available. Further, Petitioner's only exposure to visually accessible language was through his paraprofessional aides (when available), limited time with teachers of the deaf and some sign communication at home. The majority of time the Petitioner spent in school he had no other communication options, models, or opportunities with teachers or peers. [Pet. Ex. 65]

Children need good language models early on in order to develop an internalized understanding of language structure. They need exposure to language in order to develop a strong vocabulary. They need exposure to academic language in order to develop knowledge and understanding of the world around them. They need exposure to social language in order to develop friendships and relationship with others. They

need a solid understanding of language in order to learn to read, to write, and often to problem solve. Petitioner's lack of exposure to accessible language models limited his understanding of language and ability to use language for learning. [Pet. Ex. 65]

Petitioner's limited language competence and the impact on his knowledge and academic skills is permanent. The long-term impact of Petitioner's language and academic deficits secondary to limited exposure to language is varied and far-reaching. Given Petitioner's cognitive ability and desire to achieve and have a career, Petitioner would have been a good candidate for college. He is not a viable candidate for college at this point though he might gain sufficient academic skills to gain entrance to a community college program. This limits his career options. [Pet. Ex. 65]

While at MSD, Petitioner demonstrated substantial growth in communication skills. This may give him greater access to social information, knowledge about the world and perhaps better academic skills, however the gains are likely to remain small relative to the substantial gaps between what Petitioner can do and normal expectations. [Pet. Ex. 65]

Petitioner missed nearly two decades of social information that will hamper his future relationships, including those with potential partners/spouses and his own children. [Pet. Ex. 65]

Petitioner has had linguistic deprivation as a result of the pattern of very limited early exposure to an accessible language and chronic absence of a linguistically accessible environment through most of his life. [Pet. Ex. 65]

Dr. Isquith recommended that Petitioner remain at the MSD so that he would have 1) access to language models and the development of stronger ASL skills; 2) visual access to language with a school program that has experience and expertise in teaching deaf and hard of hearing students; 3) social - have access to signing peers allowing him to develop relationship within the Deaf Community and to learn about himself as a deaf individual; and 4) vocational consultation access to help him find work types that will fit with his communication and academic limitations. [Pet. Ex. 65]

Based on the testimony of both Dr. Isquith and Dr. Whalen, it is unlikely that Petitioner will regain his fundamental language skills. However, Petitioner could strengthen his language, knowledge and his communication skills, and his ability to relay with others. [Tr. Vol. II, pg. 261]

Placement at MSD was very good step for Petitioner because it provided him with a language-rich environment with peers with whom he could communicate for the first time in his life. The MSD also provided the Petitioner with access to reading, writing,

math and academic curriculum that he could access, likely for the first time in a consistent way. [Tr. Vol. II, pg. 261]

However, Petitioner still needs a knowledge base. Part of how people relate to other people, have relationships, and have jobs is a shared knowledge base. Hearing people listen to the news, the radio, read things and talk about them because we have shared experiences and a shared knowledge base. Petitioner does not have that. He needs to continue to gain some basic education to make up for what is missing in hopes that he will have more typical relationships and more typical social skills or the rest of his life as well as work skills. [Tr. Vol. II, pgs. 264-265]

Dr. Isquith testified that the Southwest Center in Big Springs, Texas would be an appropriate educational placement for Petitioner to make-up the education that was lost due to his inability to access the curriculum while at Sturgis. [Tr. Vol. II, pgs. 267-269]

Southwest Collegiate Institute for the Deaf offers a Developmental Education Program/Success Initiative for students that do not have college-level skills. The classes are taught in ASL. [Pet. Exs. 83/84/85/]

Because of the lack of language knowledge, Petitioner has language deprivation syndrome. He is unlikely to be fluent in signed or any other language. He may be able to improve on his language. [Vol. I, Tr. Pg. 49]

The Michigan School for the Deaf completed an American Sign Language Conversational Proficiency Report on March 18, 2017 (P-levels). P-Levels are scored from 0 to 7. Level 7 is typically reached during adolescence. In March 2017, Petitioner was at a P-level 6. By December 15, 2017, he had reached level 7. [Resp. Ex. 24]

Although every IEP since 2014 has required an educational interpreter as a supplementary service, the implementation has been sporadic. Between 2014 and 2016, Petitioner had several individuals with varying skill sets serving as the "educational interpreter" including Janice Braun, Jessica Hohn, Gayle Cunningham, Brittani Volstromer, Danielle Dunlap and Virtual VRI⁸. [Resp. Exs. 57/58 and 59]

Petitioner had seven classes, but an interpreter was present generally only in two to three of his classes during his freshman and sophomore years. [Tr. Vol. I, pg. 127]

Jan Braun served as the interpreter for part of Petitioner's eleventh grade. She provided the most language assistance of any interpreter/assistant. [Tr. Vol. I, pgs. 140-141]

⁸ Virtual VRI is Video Remote Interpreting Services which using a laptop computer was an interpreter located in Hawaii.

Ms. Braun left after a few months, and aide Danielle Dunlap began serving as an "interpreter". Ms. Dunlap lasted about one month and then an interpreter from Hawaii using the Virtual Video system began. However, this interpreter was only available during the afternoons. In addition to this interpreter, an aide was assigned to Petitioner. [Tr. Vol. I, pgs. 142-144]

Sturgis attempted to hire a qualified interpreter but had limited success in finding an appropriate individual.

On June 7, 2018, Petitioner graduated from high school receiving a regular high school diploma.

During the two years that Petitioner attended the MSD, he made great improvement in language. However, it was not enough for him to be an independent adult going forward. He still needs language education. [Tr. Vol. I, pg. 66]

CONCLUSIONS OF LAW

In the instant matter, like in most due process hearings, many witnesses testified and there were numerous exhibits offered and admitted into evidence. Post-hearing written closing arguments were permitted. The closing arguments filed in this matter were lengthy, detailed and thorough regarding the witnesses' testimony, documentation offered at hearing and the applicable law. I have reviewed and considered all that is contained in the post-hearing written closing arguments, the exhibits and the transcripts of the hearing in deciding this matter.

Based on the evidence submitted in this matter, I find by a preponderance of the evidence that District failed to provide a free appropriate public education (FAPE) for Petitioner. Petitioner had been enrolled in Respondent District from the time he began attending public school until the fall of 2016 when he began attending MSD.

During his time at Sturgis, Petitioner failed to learn language resulting in his limited understanding of language and ability to use language for learning as found by Dr. Isquith. This is a denial of FAPE.

District argues that Petitioner learned some language as evidenced by the progress he made as reported in each IEP and testified to by the various District employees. It baffles this Tribunal as to how the District can contend that Petitioner learned language when both Mr. VandenAkker and Dr. Isquith found significant language deprivation to the extent that in the Fall of 2016 during which Petitioner was a senior in high school, he was found to be below the first percentile in verbal communication skills.

While various District employees testified that Petitioner made progress on his IEP goals, each IEP reported that he made no improvements as to his actual ability. He started high school with his assessment levels between K and third grade. These levels remained the same through the day he left Sturgis Public Schools. From the record, the District made no effort to determine why Petitioner made no progress on his reading, writing or math levels. The (lack of) progress was merely reported year after year, IEP meeting after IEP meeting, with no discussion or additional evaluations to determine the problems.

Petitioner's mother requested additional evaluations in February of 2016. District personnel found no reason for additional evaluations despite its clear knowledge that Student's progress had stagnated. The additional evaluations that finally occurred in April and September 2016 identified the problem. Petitioner lacked the language basics necessary for learning.

While the District held IEP meetings every year as required, it does not appear that the District actually considered any of the information in a meaningful way. The staff reported the stagnated evaluation reports, checked the boxes for language and extended school year, copied the supplementary aids and services but never really considered the information. There has been no evidence presented that any evaluations were considered to attempt to identify the problem. No real discussion appeared to consider the supplementary aids or services. Promises were made regarding "educational interpreters" that were difficult to keep because the District was unable to retain qualified educational interpreters.

The supplementary aids and services remained virtually identically in every IEP from 2014 through 2016 despite Petitioner's assessment remaining significantly below grade level. There is nothing in the record to indicate that any IEP team ever evaluated the usefulness of the services in actually addressing any of Petitioner's deficits rather than just continuing them as a matter of course. The supplementary aids and services clearly did not do anything to improve Petitioner's reading, math or comprehension grade levels. He started high school with his assessment levels between K and third grade. These levels remained the same through the day he left Sturgis Public Schools.

For instance, it is unclear how giving a student a copy of the teacher's notes helps when the student can't read or comprehend the notes. Additionally, despite each IEP calling for an educational interpreter and all directions to be provided in sign language, the services implemented by the District failed to provide this agreed-upon assistance. The District utilized a hodge-podge of services including inappropriate individuals, untrained individuals and finally a person via computer from Hawaii. This system had built in problems that the District never addressed, particularly that the "interpreter" was only available in the afternoons because of the 6-hour time difference between Michigan and Hawaii. This difficulty does not include the technical problems. The District clearly

should have known about the screen freezes as this occurred during an IEP meeting and at least one teacher testified to the technical difficulties. To be clear for the record, the lack of interpreter is not the error here. It merely compounded the problem that Petitioner was never taught any language to begin with. The lack of an interpreter only exasperated the lack of language.

Despite the District's clear knowledge that Student required a visual language, the District made no attempts to ensure that a visual language was taught to Student during his time in the high school until 2016. During the summer of 2016, the District, after the assessment from Mr. VandenAkker, provided summer school services in ASL. From the record this was the only concerted effort by District to provide Petitioner any direct education in a visual language prior to Petitioner's enrollment in MSD.

MSD is the only school for the deaf located in the State of Michigan. All the staff use ASL as the primary communication. All the staff are certified hearing-impaired teachers. It is a language rich environment for a student who uses ASL. Some Intermediate School Districts and/or school districts operate hearing impaired categorical classrooms. Sturgis Public Schools does not operate any such program.

Student is a student with a hearing impairment. Because Student has a hearing impairment, each IEP Team was required to 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 in determining the appropriate educational placement for Student. In this case, it is unclear if or how the District or IEP team actually considered any communication with peers or professional personnel in light of the difficulties obtaining interpreters. Merely including in an IEP that the team considered language and that Student would receive all instruction in sign but then not actually having competent interpreters is not in compliance with IDEA requirements.

From the record, it appears that despite Petitioner's known hearing impairment and the MARSE rule requiring that the MSD be considered within the educational placement continuum for hearing impaired students, Sturgis never considered this placement during any of Petitioner's IEPs prior to May 2016. It is baffling as to why such a placement was never considered particularly in light of the District's undisputed difficulties in obtaining qualified interpreters for Petitioner. Furthermore, Petitioner was clearly not making any progress at Sturgis despite passing his classes.

As noted above, every IEP included the assessment results for Petitioner which remained the same through the ninth grade, tenth grade and eleventh grade. Petitioner only made progress when he was finally placed at the MSD in the fall of 2016. Petitioner's progress at MSD shows what the District should have known all along –

Petitioner is capable of making academic progress if given the appropriate educational environment and supports.

The Respondent District alleges that the educational expertise of the District deserves deference. However, any deference due to the District does not allow the District to avoid or fail in their responsibility to this child to provide a free appropriate public education. Despite Petitioner's stagnant educational progress, the District conducted no formal language development assessments from the time Petitioner was 13 years old until he was 17 years old.

The District contends that Petitioner's mother should have known of the Petitioner's language deprivation and brought this complaint earlier. The District argues that the Petitioner's mother was required to investigate the cause of the Petitioner's academic stagnation but that the District had no such obligation; this argument is backwards – the District was obligated to determine the cause of the Petitioner's failure to progress and the mother should have been allowed to rely upon the District's expertise. Based on the District's actions, there was no reason for Petitioner's mother to be aware of the deprivations. As she testified, no one at the District seemed concerned and she thought that the District's staff were the experts. It was not until Dr. Isquith reported the actual ongoing harm happening to the Petitioner that the Petitioner's mother realized the problem.

The Petitioner's mother's testimony about when she became aware of the Petitioner's lack of language is consistent with her actions. Petitioner's mother filed a previous due process complaint in 2012 concerning access to interpreters. It would seem to logically follow that if Petitioner was aware of the significant language deprivation that Petitioner suffered, she would have brought that allegation as well. From the record, I find no reason to alter my previous determination that Petitioner and his mother had no reason to know or should have known that Petitioner's language deprivation was so severe until Dr. Isquith's evaluation in September 2016. Despite the District's repeated attempts to allege that this due process complaint was not filed timely, this Tribunal has found that Petitioner filed the Due Process Hearing Complaint within two years of the date he knew or should have known about the language deprivation making the Due Process Complaint timely.

The District seems to focus on the steps it took to have an interpreter present as a defense to their denial of FAPE. The use of an interpreter or lack thereof is a very different argument than the one actually raised by Petitioner. Petitioner's allegation is that he was denied FAPE because he was never taught language as a basic educational need. Respondent District's actions in attempting to provide an interpreter in no way addresses the fundamental lack of language education. The lack of a qualified consistent sign language interpreter did not cause the problem in this matter, it merely exasperated Petitioner's lack of language.

The fact that the Petitioner was able to pass his classes with the supplementary aids and services that were provided does not change the fact that Petitioner was never taught language. Simply moving from grade to grade does not mean that Petitioner received FAPE. In this case, Petitioner clearly did not receive FAPE because of the lack of language while attending Sturgis Public Schools. There can be no question that Petitioner did receive FAPE while he attended MSD. However, the two years of attendance at MSD for Petitioner's senior year and an extra year, do not rectify the educational loss that Petitioner suffered during his time at Sturgis Public Schools particularly the first three years of high school. It merely means that Sturgis finally provided FAPE for Petitioner's senior year.

Based on the clear and credible testimony of Dr. Isquith and supported by the reports and testimony of Mr. VandenAkker and Dr. Whalen, I find that Respondent District denied Petitioner a free appropriate public education because of the severe language deprivation that he suffered.

Although Petitioner received a regular high school diploma in 2018, this does not cure the denial of FAPE caused by the District's actions prior to placing Petitioner at MSD. Petitioner is entitled to compensatory education to alleviate the educational loss caused by the District's actions during the time Petitioner was enrolled in the District and attending Sturgis Public Schools.

Petitioner is currently 19 years old. Petitioner will require an educational placement appropriate for his age. Based on the testimony of Dr. Whalen, Petitioner will need a deaf signing environment, deaf peers, and deaf instruction in signed language. He will need to catch up on his reading, writing and math, the basic skills needed for success in both his career and his life. Petitioner needs more time with his peers who sign, with adults who sign to develop relationships and friendships while spending time with study groups studying together applying language to academic topics.

Because of Petitioner's lack of fluency in any language, he will need someone who can teach him signing and observe whether Petitioner is comprehending language. Having an interpreter in a hearing classroom, as Sturgis (partially) provided during the first three years of high school, does not meet Petitioner's language needs. It did not meet his needs while at Sturgis and it certainly will not meet his needs currently. Petitioner needs an environment rich with visual language.

Dr. Isquith testified that the only program in the country that he is aware of that provides the type of programming that Petitioner will require is the Southwest Collegiate Institute for the Deaf (SWICD) at Howard College in Big Springs, Texas. This is a two-year program. However, based on the testimony of Dr. Isquith it is likely to take Petitioner longer than two-years because of the amount of remedial education that he requires.

No testimony was presented concerning any other educational program for deaf students Petitioner's age. The Southwest Collegiate Institute for the Deaf offers a Developmental Education Program / Success Initiative for students that do not have college-level skills. I find that this educational placement will provide the needed educational services Petitioner requires to remediate the educational loss caused by Respondent District's actions. The District will be responsible for paying Petitioner's tuition costs while attending the SWCID. In addition, because the program is located in Big Springs, Texas, the District will be required to pay for Petitioner's room and board.

Furthermore, under 34 C.F.R. § 300.34, related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. Again, because the SWCID program is in Big Springs, travel to and from Texas will be required. The District will be responsible for transportation for Petitioner from Sturgis, Michigan to Big Springs, Texas and back at the beginning and end of each school year as well as for winter break and spring breaks.

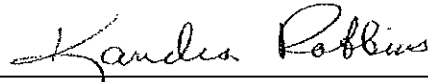
ORDER

IT IS ORDERED:

1. Petitioner's complaint is **GRANTED**.
2. Petitioner has enrolled in SWCID. Respondent District shall be responsible for payment of Petitioner's tuition at SWCID Developmental Education Program / Success Initiative until he completes the remedial program or for a maximum of three years.
3. Respondent District shall be responsible for payment of Petitioner's room and board costs while attending SWCID Developmental Education Program for a maximum of three years.
4. Respondent District shall be responsible for transportation for Petitioner from Sturgis, Michigan to Big Springs, Texas and back for each school year including winter and spring breaks for up to three years.
5. Any claims or defenses not specifically addressed herein are dismissed with prejudice.
6. Respondent District shall provide proof of compliance with this decision and order to the Michigan Department of Education, in conformity with

the form and content required by that agency, within 30 days of the date of this decision and order or upon completion of the required action whichever is later.


7. 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 30th day of October, 2018.


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