

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

**J.H. o/b/o B.H.,
Petitioner**

v

**Romulus Community Schools,
Respondent**

Docket No.: 18-003814

Case No.: 18-00022

Agency: Education

Case Type: ED Sp Ed Regular

Filing Type: Appeal

**Issued and entered
this 24th day of May, 2018
by: Michael J. St. John
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 February 23, 2018, 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 for hearing. It was assigned to Administrative Law Judge (ALJ) Michael J. St. John.

A Telephone Prehearing Conference was held as scheduled on March 16, 2018. At that prehearing conference and in the March 19, 2018 Order Following Prehearing Conference, the issues were identified and clarified pursuant to Rule 792.11808.

The hearing was held as scheduled on May 1 and 2, 2018. J.H., B.H.'s (Student's) mother, appeared on behalf of Student B.H. Attorney Gouri G. Sashital appeared on behalf of the Respondent.

At the conclusion of the hearing the record was closed.

ISSUE

As agreed to by the parties during the prehearing conference, the issues to be decided are as follows:

1. What should be the proper placement for the Student for the remainder for the 2017-2018 school year?
2. Should the Student receive compensatory education for the time period from November 2017 through the present?
3. Should the Student receive services for the extended school year?
4. What adaptive equipment is appropriate and required for the Student?

EXHIBITS

The following exhibits were offered by Petitioner (numbers) and Respondent (letters) and admitted into evidence without objection unless otherwise noted:

1. March 13, 2018 Starfish Evaluation of Student¹
2. March 20, 2018 Starfish Evaluation of Student²

- E. April 28, 2016 IEP
- F. April 28, 2016 Notice of FAPE
- G. April 27, 2017 IEP
- H. April 26, 2017 Notice of FAPE
- I. October 16, 2017 IEP (from Metro Charter Academy)
- J. November 20, 2017 Letter from Dr. Floyd to J.H.
- K. November 15, 2017 Notice for Provision of Programs and Services
- L. January 24, 2018 Evaluation
- M. Progress Notes
- N. Speech Services Log
- O. March 4, 2018 Complaint Investigation Report
- P. April 11, 2018 Letter from J.H. to Dr. Floyd
- Q. Emails to/from J.H. and Dr. Floyd
- S. Attendance Record
- U. Metro Charter Academy 2017-2018 Behavior Report
- W. April 19, 2018 REED
- X. March 19, 2018 Notice for Provision of Programs and Services
- Y. April 26, 2018 Emails and Daily Activity Logs

¹ Exhibit 1 was admitted over the Respondent's foundation objection.

² Exhibit 2 was admitted over the Respondent's (insufficient notice) procedural objection.

Exhibits A, B, C, D, R, T, and V were not offered.

APPLICABLE LAW

The petitioner-parent, as the party challenging the District's determination or implementation of special education and related services, has 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).

As the Michigan Supreme Court has stated, "[p]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence." *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985). A "preponderance of evidence" is best described as that evidence having the greatest weight.

The Code of Federal Regulations, 34 CFR 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.

In assessing whether a student's IEP was reasonably calculated to enable the student to receive educational benefits under *Rowley's* second basis above, our Sixth Circuit Court of Appeals noted that nothing in *Rowley* precludes the setting of a higher standard than the provision of "some" or "any" educational benefit, and held that the IDEA requires an IEP to confer a "meaningful educational benefit gauged in relation to the potential of the child at issue." *Deal v Hamilton County Bd of Ed*, 392 F3d 840, 862 (CA 6, 2004).

Nevertheless, the IDEA requirement that school districts provide disabled children with a free appropriate public education does not require that a school either maximize a student's potential or provide the best possible education at public expense. *Doe v Tullahoma City Schools*, 9 F3d 455 (CA 6, 1993); *Fort Zumwalt Sch Dist v Clynes*, 119 F3d 607, 612 (CA 8, 1997), *cert den*, 523 US 1137 (1998). In *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017), the US Supreme Court expanded its explanation of FAPE in *Rowley* and stated that in order to provide a FAPE, the IDEA

requires an educational program "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.*

The primary responsibility for formulating the education to be accorded a disabled child, and for choosing the educational method most suitable to the child's needs, was left by IDEA to state and local educational agencies in cooperation with the parents or guardians of the child. Reviewing courts may not substitute their own notions of sound educational policy for those of the school authorities which they review. *McLaughlin v. Holt Pub Schs*, 320 F3d 663 (CA 6, 2003).

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 the student's potential. *Rowley*, 458 US at 206-07; *Deal*, 392 F3d at 862.

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

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, B.H., is a now five-and-a-half-year-old pre-Kindergarten student with the following relevant educational history:
 - 2016-2017 ECSE³ classroom at Barth Elementary in Respondent district
 - 9/17-11/17 General Education Kindergarten at Metro Charter Academy
 - 11/17-3/18 (No enrollment)
 - 3/18-present ECSE classroom at Barth Elementary in Respondent district
2. Student has had several evaluations which are mostly consistent⁴. Although tending to slightly overestimate the Student's ability, the evaluation performed by the Respondent's School Psychologist (Exhibit L) is the most comprehensive and accurate evaluation of the Student. It shows that the Student:
 - a. Enjoys learning
 - b. Has age appropriate development in adaptive and cognitive functioning
 - c. Has deficits in communication (speech and language), social, and fine motor skills (particularly with writing)

³ ECSE: Early Childhood Special Education

⁴ Ms. Biggs' one-time two-hour evaluation (Exhibit 2) is somewhat of an outlier that tends to over-estimate the Student's needs and indicates no deficits in speech/language skills and no need for special education services in this area (Finding of Fact #95) which all other witnesses, including J.H., disagree with. As noted elsewhere in this decision, this evaluation is an overestimation primarily due to J.H.'s overestimation of the Student's abilities.

- d. Knows his colors, counts to 20, and recognizes basic shapes
 - e. Is mostly (but not completely) able to write letters and numbers
 - f. Shows social difficulties with/has difficulty playing with peers
 - g. Struggles with following directions and staying focused
3. The Student's speech and language impairment is negatively affecting his behavior which, in turn, has resulted in his diminished social skills.
 4. Student made progress during the 2016-2017 school year while enrolled in the Respondent's ECSE classroom as evidenced by his improvement noted on his 2016 and 2017 IEPs (Exhibits E and G respectively).
 5. Student did not make any progress toward any of the Student's goals set forth in his April 2017 IEP while he was enrolled in the charter school's general Kindergarten class.
 6. Student has made some limited progress since re-enrolling in the Respondent's ECSE classroom on March 19, 2018.
 7. The ECSE classroom afternoon session, where Student is enrolled, has a teacher and two aides (three adults) for the six students (including Student).
 8. Student best responds to close supervision, redirecting, and adult interaction.
 9. The ECSE classroom necessarily provides more supervision, redirecting, and adult interaction than a general education Kindergarten would or could.
 10. Although there could be some improvements in communication between the Student's mother and the Student's teacher, aides, and principal, the school is keeping the Student's mother adequately informed of her son's progress.
 11. Two minor incidents notwithstanding, the Student is safe in his current placement at the ECSE classroom at Respondent's Barth Elementary. This was not the case at Metro Charter Academy where there were approximately sixty separate behavioral incidents between September 6, 2017 and November 8, 2017:

<u>Date</u>	<u>Incident</u>
9/6	Pushed two students
9/7	Hit teacher
9/21	Hit friend
9/21	Kicked classmate

9/21 Hit friend
9/25 Hit friend
9/26 Hit/stomped on classmate
9/26 Hit classmate
9/28 Threw woodchips at classmate
9/28 Hit teacher
9/28 Yanked marker out of another's hand
10/2 Distracted/pestered other students
10/3 Pulled down pants in front of others (in the bathroom)
10/6 Kicked classmate
10/6 Hit friend
10/6 Hit student twice
10/6 Refused to participate in art class
10/9 Mocked student – caused student to cry
10/9 Threw rock at classmate
10/10 Mocked student – caused student to cry
10/10 Hit classmate
10/12 Yelled "die" in classmate's face
10/12 Threw pencil at teacher's desk
10/13 Took student's paper & pushed student
10/13 Refused to work – erased others' work
10/13 Mocked teacher
10/13 Out of seat, crawling under tables
10/16 Running at kids with pencil in hand (pretending to hit them in the face)
10/16 Pushed student down
10/16 Distracted students by yelling at them
10/17 Choked student
10/17 Refused to work; crawled under tables (four referrals for this on 10/17)
10/17 Hit and kicked student
10/20 Kicked three classmates
10/20 Hit student
10/20 Refused to work
10/23 Drew on other students' whiteboards
10/23 Rolled on carpet
10/24 Drew on another student's whiteboard and pulled student's hair
10/24 Repeatedly took student's sweater
10/25 Pulled student's hair
10/30 Waved scissors around, scratched teacher
10/30 Refused to work and hit student with construction paper
11/7 Poked classmate in side with a pencil

11/8 Hit student
11/8 Hit classmate
(Exhibit U).

12. The likelihood of future minor incidents would be increased if the Student were to be placed in a general education Kindergarten since those two prior minor incidents occurred when the Student was receiving less adult supervision than is the norm in the ECSE classroom.

13. The Student's classroom instructor, speech pathologist, school psychologist, and principal as well as the Respondent's Director of Special Education all believe that the ECSE classroom is the best placement for the Student for the remainder of the 2017-2018 school year.⁵ The Student's outside therapists and evaluators were unable to opine on the Student's abilities to function in a classroom and could not or did not offer opinions as to the Student's best placement for the remainder of the school year.⁶ Indeed, Ms. Williams, the Student's outside infant mental health therapist agrees that additional support would be beneficial to the Student.⁷ The only evidence presented that the Student would be better off in a general education Kindergarten than the ECSE classroom was the Student's mother's subjective opinion that the Student needs to be challenged more.

14. The ECSE classroom is the most appropriate placement for the Student for the remainder of the 2017-2018 school year.

The following represents a summary of the testimony of the witnesses who testified in this matter:

J.H., Student's Mother

15. J.H. believes that her son is not adequately challenged in the ECSE classroom. She believes that her son is a bright young man who would better excel if adequately challenged in a general education Kindergarten.

16. J.H. believes that the Student enjoys the classroom, loves school, and just wants to go to school.

17. During the 2016-2017 school year, J.H. was trying to get additional information about the Student's speech therapist but was told that the therapist had not yet

⁵ Findings of Fact #49, #53, and #56, #65, #42, #73, and #36 respectively.

⁶ Findings of Fact #86, #92, #98, and #102.

⁷ Finding of Fact #85.

been hired. J.H. believes that the Student did not receive speech therapy in the months of November and December of 2016 and January, February, and March of 2017.⁸

18. J.H. believes that her son is being neglected based on an incident that occurred in the 2016-2017 school year; the Student was alone in a bathroom and had kicked a first-grade student in the bathroom – Student was not injured in that incident.
19. J.H. would like to have her son receive one-on-one speech therapy instead of group sessions.
20. J.H. believes that the teacher needs to confirm with the Student each direction and assignment in addition to the general instructions to the class. J.H. believes that the Student desires the individual attention and connection to know that the teacher is watching him closely. J.H. believes that if the Student does not feel attended to then he will not do his work.
21. J.H. was unaware of any of the 63 behavioral referrals that the Student had during the approximately nine weeks that he was enrolled in the general education Kindergarten at the charter school.
22. J.H. herself felt traumatized by some of the incidents involving her son that have occurred both at the Respondent's elementary and the charter school.

Donise Floyd, Ph.D., Respondent's Director of Student Services

23. Dr. Floyd is the Director of Student Services for the Respondent. In that capacity she oversees the special education program for the Respondent. She was previously an administrator and teacher of special education with Detroit Public Schools. She has a B.A. in learning disabilities, a M.A. in emotional impairment and a Ph.D. in special education administration. She is a certificated special education teacher.
24. Respondent offered an early childhood self-contained classroom – early childhood special education (ECSE) along with speech therapy to meet the

⁸ Speech services (either directly or consultatively) were provided each month that the Student was enrolled in the Respondent's district except for February of 2017 when the Respondent was attempting to hire a replacement speech therapist. Because speech therapy from 2017 is not one of the listed issues in this case, no remedy is available. Further, the Respondent has provided speech therapies in excess of the minimum once per month required in the Student's IEP; compensatory education for one missed opportunity eighteen months ago would be inappropriate given the amount of speech therapy already provided by the Respondent to the Student.

Student's needs for both the 2016-2017 and 2017-2018 school years. ECSE is a half day program with a teacher and two support staff persons for up to 12 students, although only six students (including Student) are enrolled in the current afternoon session where the Student is enrolled. One-on-one support, behavior redirection, physical, occupational, and speech therapies, and social work are all included in the classroom. Staff work with children on appropriate play and behavior. The ECSE program is offered only at Barth Elementary School in the Respondent's district.

25. Dr. Floyd reviewed the Student's IEP from another school and made an offer for the Student to be placed in the ECSE program. Following a 30 school day observation period an IEP was to be convened to determine further placement. Initially, when the Student was to be enrolled in November of 2017 (after leaving the charter school), the evaluation was to occur in January of 2018. That evaluation never occurred because the Student was not enrolled and so there was nothing to evaluate and no IEP to complete.
26. The Student is speech and language impaired and receives special education services for this disability. The Student also has behavior issues – he is off task, has difficulty following multiple-step directions, and interacting with his peers.
27. The Student was disenrolled at the start of the 2017-2018 school year (because he enrolled in another (charter) school) and the Student was then re-enrolled in the Respondent district on March 19, 2018. In November of 2017, Dr. Floyd spoke with J.H. about J.H.'s desire to place the Student in the general education Kindergarten classroom at his local elementary school (Wick Elementary). The Student was not eligible to attend Kindergarten because he was too young. J.H. did not present Dr. Floyd with a waiver that would allow an otherwise too-young student to attend Kindergarten.
28. The October 16, 2017 IEP from Metro Charter Academy (Exhibit I) showed that the Student was in the 7th percentile for mathematics and the 31st percentile for reading. These scores indicate that the Student is struggling, particularly with mathematics although Dr. Floyd also considers a 31st percentile score in reading to be "very low".⁹ That IEP also showed little progress towards his goals in language therapy or social work; Dr. Floyd does not believe that the Student was progressing well in the general education classroom. This IEP also required

⁹ A score in the 31st percentile would be best described as "below average" or "low" rather than "very low." Otherwise 3 in 10 students have very low reading scores. A score in the 7th percentile is properly described as "very low."

reduced time in school during the day. That IEP indicated that the Student did not need assistive technology or an extended school year to access the curriculum.

29. Dr. Floyd sent J.H. a November 20, 2017 letter (Exhibit J) with a proposed placement which included the need for a 30 day observation period which would lead up to an IEP that would consider the Student's permanent placement. That placement was to be reevaluated and a new IEP meeting held after the 30 school days – January 11, 2018 (Exhibits J and K).
30. Student had 63 behavioral incidents/referrals during an approximately two-month period from September 2017 through November 2017 in the general education Kindergarten class at the charter school (Exhibit U). Student had no behavioral referrals during the 2016-2017 school year or since his reenrollment in the ECSE classroom in March of 2018.
31. Dr. Floyd considered the following factors in placing the Student in the ECSE classroom: his age, his behavior issues, his social skills, and the prior IEP's reduced school day placement. Social work was not offered separately because it is included in the ECSE program.
32. At the Student's planned January IEP (following the 30-day evaluation period), extended year services, social work, and adaptive technologies would have been discussed. The scheduled January 11, 2018 IEP was not performed because the student did not enroll and there was nothing to observe. The Respondent district did nothing to prevent or deter enrollment.
33. Dr. Floyd offered to have the Student observed by the Respondent's psychologist and speech therapist. The psychologist did an evaluation of the Student but J.H. refused to allow the speech therapist to perform an evaluation of the Student. The psychologist, Dr. Farmer, recommended placement in the ECSE classroom. Dr. Floyd offered that 30 day placement on February 12, 2018 (Exhibits Q and X).
34. The Student is currently enrolled in the ECSE classroom at Barth Elementary. The 30-school day observation period had not yet run as of the dates of the hearing – the IEP was scheduled for May 8, 2018.

35. A Referral/Review of Existing Evaluation Data (REED) has been scheduled (Exhibit W). Another IEP will be performed following completion of that REED but before the end of the 2017-2018 school year.
36. Dr. Floyd believes that the ECSE classroom is the appropriate placement for the Student because of his academic functioning, social skills, and behavioral issues. All the services to deal with these issues are imbedded into the ECSE program.

Lisa Farmer, Ph.D., Respondent's School Psychologist

37. Dr. Farmer is employed as a school psychologist for the Respondent. She was previously employed by a contracting firm and placed with the Respondent district for two years. As a school psychologist she performs evaluations and helps IEP teams make placement and support services decisions. Dr. Farmer has a B.A. in psychology, a M.A. in clinical psychology, and a Ph.D. in child and adolescent psychology. She is licensed as a psychologist in the State of Michigan.
38. The Respondent's ECSE classroom/program is designed to assist students with delays and disabilities. Most students in the classroom have developmental delays, but there are other disabilities represented in the classroom. The ECSE classroom has a small class size and provides assistance with activities of daily living (ADLs) including behavioral support as well as ancillary services (speech, occupational, and physical therapies and social work services) as needed.
39. Dr. Farmer performed an informal evaluation of the Student on January 24, 2018. She reviewed the prior IEP and progress reports. Dr. Farmer performed a developmental screener and a parent behavioral assessment questionnaire/survey. Because this was an informal assessment which is intended to provide limits to the Student's functional abilities and assist with initial placement, Dr. Farmer indicated that this informal assessment may be an overrepresentation of the Student's abilities; in a typical setting, Student would not be provided additional supports or prompts as well as demonstrations and examples. These additional prompts, however, would be provided in the ECSE classroom, just not in a general education classroom.
40. During the examination, Dr. Farmer observed the following:
- a. The Student's drawing of a person was equivalent to a three-and-a-half to four-year-old child. The Student's motor grasp was underdeveloped, and the drawing showed only three features (two eyes and a mouth) as opposed to a

figure with at least six features as would be expected of a five-year-old's drawing.

- b. The Student was unable to write his name despite prompts.
 - c. Dr. Farmer observed some motor deficits but they were within the normal range. The Student did have some difficulty staying seated and attentive to the tasks presented to him; the Student tried but had difficulty.
 - d. The Student had difficulty recognizing and writing numbers and letters; this is consistent with a pre-Kindergarten or early Kindergarten student rather than a later Kindergarten student.
 - e. The Student was unable to successfully complete the beginning/middle/end picture board story that would be expected of a Kindergarten (and even a general education pre-Kindergarten) student.
 - f. The Student was able to identify and name all the colors but for one that he was "being silly" with. This was on task with a general education Kindergartener.
 - g. The Student was able to label most of the shapes presented to him with prompts. This was on task with a general education Kindergartener.
41. Dr. Farmer's observations of the Student were inconsistent with J.H.'s reporting of the Student's behaviors and abilities. J.H.'s profile showed a child that would be functioning at an approximately 10-year-old child's level. J.H. indicated that the Student could carry on a 10-minute complicated conversation (i.e. politics) but Dr. Farmer observed that the Student could only complete about three exchanges on a simple topic of interest to the Student (an application on his mother's phone, cars and dinosaurs). Dr. Farmer believes that J.H.'s profile of the Student is elevated and was inconsistent with her observations of the Student as well as his prior educational records.
42. Dr. Farmer believes that the Student needs assistance and additional prompts that would be available in a special education setting but not a general education setting. The Student has normal cognitive skills but needs assistance with social, fine motor, and communication skills. Dr. Farmer believes that the Student's functioning is that of a three- to four-year-old child. Dr. Farmer believes that the ECSE classroom is the most appropriate placement for the Student for the remainder of the 2017-2018 school year.
43. J.H. asked Dr. Farmer to not let the speech therapist participate in the informal evaluation.

Pamela Matthews, Student's Respondent-Assigned ECSE Classroom Teacher

44. Ms. Matthews has a B.A. in elementary education with an early childhood endorsement and a M.A. in learning disabilities and autism. She is a certificated teacher in Michigan K-8 social studies and language arts with an autism endorsement.
45. Ms. Matthews is employed as an early childhood special education teacher with the Respondent district; this is her first year in that position. She had previously served as a special education teacher for eleven years. In her current position, Ms. Matthews works with students ages three through six on academic and behavioral issues to get them prepared for the general education curriculum.
46. Ms. Matthews described the classroom as having several areas where students can work on small and gross motor skills, a quiet area, and a video station. The Student is enrolled in the afternoon session along with five other students. There are three adults in the classroom along with the six students. Ancillary services come into the classroom. Students work on their behavior as part of the curriculum including one-on-one counseling.
47. Ms. Matthews was absent due to a medical issue on March 19, 2018 when the Student first re-enrolled – she has been back in the ECSE classroom since April 9, 2018. There was a substitute teacher in the classroom during her absence.
48. The Student has a speech and language impairment. Ms. Matthews has noted that the Student needs improvement in speech and language, behavior, attention span, and peer relationships. Because of his behavior issues and need to redirect the Student, it takes longer for him to accomplish educational lessons than would normally be expected of a pre-Kindergarten student.
49. Ms. Matthews believes that the current classroom is helpful to and appropriate for the Student particularly because of the small staff-student ratio. Ms. Matthews also believes that the Student is helped by the manipulatives in the class (blocks, beads, etc.)
50. Ms. Matthews has not made any behavioral referrals for the Student since his re-enrollment on March 19, 2018; Ms. Matthews has not had any behavioral referrals for any of her 14 students throughout the year.
51. Ms. Matthews has seen “a minimum amount of progress” with the Student since his re-enrollment.
52. Ms. Matthews noted that the Student knows his numbers and letters and can write some of them. She described his reading skills as low. Ms. Matthews

described the Student as delayed compared to grade-level general education Kindergarten students.

53. Ms. Matthews believes that her ECSE classroom is an appropriate placement for the Student. Ms. Matthews has not observed the Student have a need for adaptive services.

54. Ms. Matthews administered the Brigance test and the Student tested under grade level in all areas tested. He tested at the age level equivalent of a two- to four-and-a-half year old.

55. Ms. Matthews believes that the Student is doing moderately well. He needs redirection and sometimes gets too rough with his classmates.

56. Ms. Matthews misspoke during the REED meeting when she said that the Student should be in a general education Kindergarten next year. Instead, she believes that he should be in a special education Kindergarten next year and remain in her classroom for the remainder of the 2017-2018 school year. He will be too old to be in her ECSE classroom next year.

57. Ms. Matthews did note that the Student is one of the more academically advanced students in her classroom.

58. There are daily activity logs that show what the ECSE students have done for the day. The activity logs do not discuss students' progress. The activity logs are in a folder that goes home with the child every day and that the child returns the next day. There is an area on the activity log where parents can report concerns that the teacher or assistant(s) respond to.

Elizabeth Nehez, Student's Respondent-Assigned Speech/Language Therapist

59. Ms. Nehez has a B.A. in social work and a M.S. in speech/language pathology and is licensed as a speech/language pathologist.

60. Ms. Nehez is employed as a speech/language therapist for the Respondent through an independent contractor. She evaluates and treats special education students with speech and language delays. All the students in the ECSE classroom receive speech/language services. She comes to the classroom one to four times a month.

61. Ms. Nehez has worked with the Student since March of 2017 and briefly worked with him in the spring of 2017 (from March through April) after which he went on another therapist's (Ms. Taylor's) caseload for the remainder of the 2016-2017 school year. Ms. Nehez's Service Log for the Student is included as part of Exhibit N.

62. Ms. Nehez has worked with the Student three times since his return in March of 2017; these were all small group classroom sessions. Ms. Nehez is providing services consistent with the 30 minutes one to three times per month per his Notice for Provision of Programs and Services (Exhibit X).
63. Ms. Nehez works with the Student on "wh" questions and assesses his receptive language based on his responses. The Student is behind developmentally in responding to "wh" questions and has difficulty focusing long enough to participate in the exercises.
64. The need to restate directions is common amongst students in the ECSE classroom and is much less required for general education Kindergarteners. Ms. Nehez believes that the Student's behavior is impeding his ability to hear, understand, and respond to the educational curriculum.
65. Ms. Nehez believes that the ECSE classroom is an appropriate placement for the Student. She believes that the smaller classroom and additional staff is helpful for the Student.
66. Ms. Nehez agreed that the self-contained classrooms (such as the ECSE classroom) have speech/language activities imbedded into their curriculum.
67. The Student's 2016 IEP required speech services 15 to 30 minutes one to four times per month (Exhibit E). This would include either direct service or consultation with the teacher.
68. Ms. Nehez has not had sufficient data/sessions with the Student to comment on whether he has improved during the last month or so that she has been working with him.

David Thompson, Student's Respondent-Assigned Principal

69. David Thompson has a B.A. in physical education and history and a M.A. in educational leadership. Mr. Thompson is currently in his fifth year as the Principal at Barth Elementary at the Respondent school district. He previously served as an elementary general education teacher in another district for 13 years. He is a certificated teacher in Michigan in elementary education with endorsements in physical education and history.
70. Barth Elementary is home to several special education classrooms including the ECSE classroom. Most of the children in the ECSE classroom have early developmental delay and/or speech and language deficits. Students in the classroom receive multiple accommodations from the teacher and two aides.

71. Mr. Thompson attended the Student's 2016 and 2017 IEPs (Exhibits E and G). Both the 2016 and 2017 IEPs placed the Student in the ECSE classroom.
72. The Student completed the 2016-2017 school year and re-enrolled on March 19, 2017. J.H. wanted to stay in and observe the classroom on the Student's first day of school but did not have the proper background checks so she was not allowed to stay. J.H. did get to meet the substitute teacher and was reintroduced to the two aides.
73. Mr. Thompson has observed the Student in the classroom at least five to seven times since his re-enrollment. Mr. Thompson believes that the Student is performing at a level below his general education similar age peers particularly in his academics such as letters and numbers. Mr. Thompson believes that the ECSE classroom is an appropriate placement for the Student given his abilities and his age (having not turned five until this school year).

Cheryl Turner, Student's Prior Respondent-Assigned Speech/Language Pathologist

74. Ms. Turner has a M.S. in speech/language pathology and education K-8 science and an endorsement in speech/language pathology through the Michigan Department of Education. She has served as a speech and language pathologist for over 40 years.
75. Ms. Turner is contracted to serve for the Respondent school district. Ms. Turner provided speech and language services for the Student from April of 2017 through June of 2017 once a week for 20 to 30 minutes for a total of six or seven occasions¹⁰.
76. Ms. Turner believes that the Student was making some progress but needed to continue receiving speech therapy. Ms. Turner noted that the Student is "a little (hyper-) active" but was better one-on-one.
77. Ms. Turner was not asked about her opinion regarding the appropriate classroom placement for the Student.

Dorothy Williams, Student's Outside Infant Mental Health Therapist

78. Ms. Williams has a B.A. in psychology and child development and a M.S.W. She is a limited licensed social worker in the State of Michigan. She has been an Infant Mental Health Therapist for two years. Previously she was a school social worker for two years as part of her clinical studies.

¹⁰ The Student missed several scheduled therapy sessions because he was absent.

79. Ms. Williams has been working with the Student since November of 2017 once a week for two hours; these interactions are in conjunction with his mother (J.H.) in their home. Ms. Williams has not observed the Student in a classroom setting.
80. The Student's behavior is improved by having his mother present for the therapy. Ms. Williams described the Student as interactive and playful. She noted that the Student laughs a lot, is silly and goofy. Although he speaks well, the Student initially had difficulty articulating his thoughts but is now expressing himself better. Ms. Williams noted the improvements in his speech in March, roughly around the time that he restarted attending school.
81. Ms. Williams has seen improvements in the Student's expression – he now answers her questions and she understands him better. Ms. Williams has also observed improvements in the Student's motor skills and his social skills.
82. Ms. Williams has seen the Student write his name although it can be inconsistent. She described this as a willingness issue rather than an ability issue.
83. Ms. Williams noted that the Student has had difficulty sharing (toys) which negatively impacts his ability to interact with peers. Ms. Williams has only seen the Student interact with peers on one occasion.
84. Ms. Williams indicated that she has seen considerable improvement in the Student's behavior and willingness to take turns while playing games. She has also observed less need to redirect the Student toward tasks. When the Student does have a meltdown, it is brief and usually self-regulated/resolved.
85. Ms. Williams believes that additional supports would be beneficial for the student.
86. Ms. Williams was not asked about the appropriate placement for the Student.

Deborah Gershune, Student's Outside Occupational Therapist

87. Ms. Gershune has a B.S. in kinesiology and a M.S. in occupational therapy. She has been a practicing occupational therapist for thirteen years. She currently works with 21 children.
88. Ms. Gershune participated in an evaluation of the Student over the course of approximately two hours on March 20, 2018 (Exhibit 2). The evaluation included an observation of the Student, a parent interview, and a series of tests. She has also been in four one-hour treatment/therapy sessions with the Student. The sessions include two therapists, the mother, and the Student.

89. Ms. Gershune indicated that during the evaluation the Student had some difficulties transitioning between items and receiving cues to perform tasks. The Student was able to participate in each of the scheduled tasks. The Student became frustrated during the evaluation, but he was able to be redirected. The Student was able to follow directions and work with the evaluators.
90. Ms. Gershune noted that the Student has been working on participation/sharing and reciprocal play but has shown minimal progress. The Student is just now starting to show right-handed dominance which Ms. Gershune is working on with the Student.
91. Ms. Gershune is working with the Student on writing his name. The Student prefers multi-sensory approaches (sand, shaving cream, etc.) versus pen and paper for writing.
92. Ms. Gershune is unable to comment on how the Student would be able to perform in a classroom setting.

Lindsey Biggs, Student's Outside Evaluator

93. Ms. Biggs has a B.A. in child development and M.S.W. in clinical social work and a special certificate in infant health. She is the Program Supervisor and Social Worker for Starfish Family Services.
94. Ms. Biggs performed the March 13, 2018 evaluation which included the Developmental Assessment of Young Children – 2nd Edition (Exhibit 1). The assessment was done with support from J.H. and the occupational therapist. This was the only time that Ms. Biggs as seen the Student.
95. Ms. Biggs' evaluation showed the Student to be within the typical range for speech and language services and she did not and would not recommend speech or language therapies.
96. Ms. Biggs is unsure whether the results of her evaluation were affected by the setting (at home with two other adults, including his mother present).
97. Ms. Briggs indicated that she did not need to prompt or redirect the Student during the evaluation any more than she would need to for any other five-year-old child.
98. Ms. Biggs is unsure whether she can recommend that the Student attend a general education Kindergarten next year. She was not asked about the appropriateness of the Student's current placement for the remainder of the 2017-2018 school year.

Darlene Heard-Thomas, Petitioners' Advocate

99. Ms. Heard-Thomas attended post-secondary schooling for accounting and is credits shy of a bachelor's degree in accounting. She is the parent of a child with a disability. She has received training on special education through parent special education advocacy groups.

100. Ms. Heard-Thomas first met J.H. and the Student in January of 2018. She has spent several hours with the Student and has had the opportunity to observe the Student over that time. Ms. Heard-Thomas believes that the Student is "smart" because he is able to repeat adults' conversations and is easily interested in what others around him are doing. Ms. Heard-Thomas also noted that the Student has a lot of energy and requires fairly-frequent redirection but is easily redirected by his mother.

101. Ms. Heard attended the April 2018 REED meeting during which the parent provided consent for the evaluations. Ms. Heard has never observed the Student in a classroom or an educational setting.

102. Ms. Heard is not qualified to opine on the Student's appropriate placement for either the 2017-2018 or 2018-2019 school years.

CONCLUSIONS OF LAW

The Petitioner has not established, by a preponderance of the evidence, that the Student's (B.H.'s) current placement, in the ECSE Classroom at Barth Elementary School in the Respondent district, is not providing him with a free appropriate public education. All the procedural safeguards have been met here. The Student had the required IEPs at the end of the 2015-2016 and 2016-2017 school years (Exhibits E and G) which found the Student should be placed in the ECSE classroom.

Although the Student was placed in a general education Kindergarten by a charter school, the subsequent October 16, 2017 IEP (Exhibit I) showed no progress in that educational setting (Finding of Fact #5).

_____ struggles with his self-control. He currently has 30 recorded behavior events. Many of the events reflect _____ hitting and pushing classmates and even his teacher and other staff. Teacher input and the behavior events also reflect that he taken other students items, mocked them repeatedly sometimes making children cry, yelled "die" in their face, spit in their face, poked classmates with his pencil, punched a classmate in the stomach, elbowed them, pulled hair, thrown things at them such as wood chips, knocked over classmates tower, tipped their chair while they were sitting in it, stomped on their feet and kicked them. He has also gone around the room erasing other student's dry erase boards instead of doing work in his own. He has also taken someone else's snack and dumped it on the floor. The majority of this behavior appears unprovoked and is apparent in different settings including recess, art and gym class, while with the school social worker and while with the speech and language pathologist. This behavior is repeated and exhibited on a daily basis. At times, it appears that _____ is attempting to get attention from his classmates at other times, it appears to be mean behavior.

He often fails to follow directives given by the staff. He fails to stay in his chair, does not complete his work, and runs around the classroom. _____ teacher reports that _____ will spin while in class. He is continuously out of his chair and often on the floor or crawling under his desk. When _____ is redirected, there are times he does comply, but this only lasts for a few seconds. There are times in which he repeats what is said, or immediately states, "I be good." He has attempted to cut the phone cord, pulled his pants down on two different occasions, yelled out during instruction, swung his jacket and hit others, threw a pencil at the teacher desk after being corrected, growled at the teacher, and was spinning on the floor while yelling during instruction. There have been many days in which _____ has not completed any work. There are times in which it appears that _____ is fully aware of his behavior and choices. For example, a staff member entered the room and redirected him to work. He replied, "Don't look at me." "Go away." "Leave me alone." After continued prompts, he was still unable to complete the work. There are other times, in which it appears that _____ has no idea what is expected. He can verbally communicate that hitting is not okay, then moments later, he states that it is okay. Even in a one-on-one setting, _____ has difficulty with sitting down, following directives and using self-control.

_____ intentions are unclear. At times, he appears to know the difference between right and wrong, and other times, he does not seem to be able to understand. _____ mom has been in the classroom. During these moments, _____ stays in his seat for the majority of the time and attempts to complete his work.

Adverse Impact

_____ difficulty with his self-control interrupts his learning and the learning of others around him. He has been unable to produce work for the majority of the school year. Even with the teacher sitting next to him, he is unable to accurately complete assignments.

FUNCTIONAL PERFORMANCE

Progress on most recent annual goal(s)?

Language Therapy Progress:

██████ has not made progress toward the goals set at his IEP in April of 2017. ██████ reduced attention skills and behavior frequently prevents him from understanding what is being taught and demonstrating what he knows.

- 1.) ██████ continues to have difficulty following 1-2 step directions with 70% accuracy with moderate to maximal cues. ██████ is able to follow a 1-step direction with maximal verbal, gestural, and tactile cues. He sometimes requires hand over hand assistance to complete tasks.
- 2.) ██████ struggles to demonstrate knowledge of opposites and positional concepts with 70% accuracy and moderate to maximal cues. ██████ struggled to consistently demonstrate knowledge of the concepts of in/out, on/off, up/down, big/little, and under. ██████ was able to identify these concepts with 20% accuracy and maximal cues. ██████ required maximal redirection to attend to the picture cards. He focused for approximately 90 seconds and seemed to understand the concepts of in and out but then went on to identify the other concepts as either in or out as well.
- 3.) ██████ continues to have difficulty asking and answering yes/no and WH questions with 70% accuracy and moderate to maximal verbal cues. ██████ often makes a statement regarding what he wants or just gets/does what he wants/needs without permission. For example, when entering the therapy room he stated that he really likes toys, instead of asking for permission to play with the toys. When told that he had to do a little work before he could play with the toys, he got the toys off the shelf anyway. ██████ is able to answer yes/no, who & what questions with 50% accuracy and maximal cues. He required that questions be asked several times before he responded.

Social Work Progress:

██████ has not shown any growth towards his goal regarding initiating appropriate play skills and peer relationship skills. His goal is to demonstrate this at 60% of the time. ██████ struggles greatly with his self-control while in the school setting.

██████ continues to struggle with auditory comprehension as evidenced by limited comprehension of age-appropriate linguistic concepts, limited ability to follow directions, and limited ability to understand and respond to questions. He also struggles with body part identification. He was able to identify hair, eyes, nose, mouth, ears, feet and fingers. He was unable or vague in identifying face, neck, shoulder, arm, elbow, hand, chest, back, knees and legs. ██████ often repeats what was said or what is being taught without fully understanding it. For example, after listening to a story book, ██████ was unable to answer questions about it. His only response to the story was, "the bear says roar" and added that, "the cat says meow", even though the story did not contain a cat. He repeated these statements throughout the remainder of the session.

Adverse Impact

██████ language deficits negatively impact his ability to process, comprehend, retain, or integrate spoken language. These deficits impair the ability to follow directions, complete assignments, and be organized.

Exhibit I.

The Respondent district, considering both the April 26, 2017 IEP and October 16, 2017 IEP offered to place the student in the ECSE classroom on a 30 school-day trial basis and then evaluate him for continued placement (Exhibits J and K). This is appropriate pursuant to 34 CFR §300.323(e)(2) and R 340.1721b(5).

The Michigan Administrative Rules for Special Education, R 340.1721b(5) states "For students with an IEP in effect at a previous public agency who transfer public agencies within the same school year, the new public agency shall immediately provide a FAPE. A decision regarding implementation on an IEP in accordance with 34 CFR § 300.323 shall be made within 30 school days of enrollment.

SELECT A or B:

A. The school district shall adopt the IEP dated _____ as developed by the previous public agency, and an annual IEP will be convened on or before _____ (not to exceed 365 calendar days from date of current IEP).

OR

B. A new IEP will be developed on or before 01-11-2018 (not to exceed 30 school days), and the programs and services identified below will be provided during the 30 school days prior to the new IEP team meeting:

PROGRAM/SERVICE	TIME	FREQUENCY
<u>SPEECH</u>	<u>15</u> to <u>30</u>	<u>1</u> to <u>3</u>
<u>ECSE (4th)</u>	<u>504 hrs/yr</u>	<u>1</u> to <u>1</u>
	<u>PPT</u>	<u>1</u> to <u>1</u>

Exhibit K.

The Respondent district considered placing the Student in a general education Kindergarten, but the evidence did not show that this would be beneficial to him and it was against the recommendation of his prior teacher.

NOTICE (Must be completed for all students):

These services will begin on 11/21/17 at Barth / PM class.

Other options (e.g., programs and services, supplementary aids and services) considered but not selected were:

Option Considered but Not Selected	Reason Not Selected
<u>Student returning to Home school</u>	<u>Recommendation from Previous teacher</u>

Exhibit K.

Because the Student's mother did not enroll the Student until March 19, 2018, that evaluation period and IEP had not been completed at the time of the hearing.

Having met all of the procedural requirements of the IDEA, the only question remaining is whether the ECSE classroom at Barth Elementary Schools is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" as required by *Endrew F.* It is.

Student has serious language deficits requiring special education. His difficulties with language is negatively affecting his ability to communicate with others (adults and peers) and is negatively affecting his academic progress.

Baseline Data:

██████████ oral language skills include deficits with both expressive and receptive language skills. He has made progress on his goals for developing his vocabulary. ██████████ has also increased his spoken length of utterances from 3 word phrases to full sentences during spontaneous speech and communication exchanges/conversation. During informal assessments, ██████████ was able to sequence colors with moderate cueing, follow one word and short phrase directions independently or with minimum cues and respond appropriately to yes/no statements. An update of ██████████ goals will include understanding opposites/positional concepts, following 1-2 step directions and demonstrating knowledge and use of /yes/no/ and /wh/ questions. These oral language goals are in line with developmental milestones for his age.

Impact:

██████████ struggles with receptive and expressive oral language adversely affects his ability to communicate with peers and adults and progress in his education and academics.

Resulting Needs:

It is recommended that ██████████ continue receiving speech-language services to increase expressive and receptive oral language skills in order to more fully participate in his education and academics in the classroom setting.

SOCIO-EMOTIONAL/BEHAVIORAL

Baseline Data:

Classroom observations shows that ██████████ struggles with following directions, staying focused, and interpersonal relationship skills.

Impact:

Impact of these behaviors are seen in ██████████ expressing himself appropriately.

Resulting Needs:

██████████ will benefit from developing socially relevant behaviors /interpersonal relationships.

PERCEPTION/MOTOR/MOBILITY

Gross and fine motor coordination, balance, and limb/body mobility.

Exhibit G.

All of the evidence presented by the Respondent's trained evaluators shows that the Student will benefit from continued enrollment in the ECSE classroom (Finding of Fact #13). None of the Petitioner's trained evaluators were able to opine on the Student's placement and one even agreed that additional services would be beneficial (Finding of Fact #13). The services that Ms. Williams believes would be beneficial are those provided in the ECSE classroom; they are not provided in the general education Kindergarten.

The only evidence presented by the Petitioner that the Student should be in the general education Kindergarten classroom is the Petitioner-mother's own opinion. Although J.H. knows her child better than anyone else, she is necessarily biased in her assessment of her son. Her reporting of the Student's abilities is not consistent with the observations of both the school's personnel and her own private evaluators (Findings of Fact #41 and Exhibits 1 and L).

J. H. completed the Adaptive Behavior Assessment System Third edition. Her responses produced a profile that suggested a development equivalent to a typical 10.0-10.3 year old. Endorsements stated that he independently completed tasks like "Joins an organized group without help from another person (for example a club, sports team or musical group" or that contradicted observed behavior during the testing session "Talked with others about complex topics for at least 10 minutes (for example politics or current events)." When ratings were tabulated through items with an established ceiling at the 50th percentile for a 5.3 year old, J. H.'s scores fell in the Low (functional academics, Communication, Self-direction, Social) to Average range (Leisure, Community Use, Home Living).

Exhibit L.

The Petitioner's concerns regarding minor incidents (a playground accident and the Student being less-closely supervised in a bathroom) are noted and certainly less than ideal but are hardly unexpected in an elementary school. It is unreasonable to expect that a five-year-old child, of any ability level, would proceed through an entire school year without any incident or accident. Indeed, this is part of the learning process for children. Further, these types of incidents are more likely to occur in a general education Kindergarten classroom than with the closer staff supervision of the ECSE classroom.

J.H. agrees that the Student needs additional prompting and one-on-one supervision and instruction from his teachers (Finding of Fact #20). He is better able to receive the support that he needs in the ECSE classroom. The environment that J.H. desires for her son as explained at the hearing sounds a great deal like the ECSE classroom.

Q: Can you explain what that would like in a general ed classroom with a general ed teacher?

...

A: If a teacher has 24 students and the teacher is standing right in front and she pulls up a worksheet as she states to the whole class we're about to work on our letters J for jet so we're gonna be talking about flying today and, you know, the word jet, I need everyone to write the word jet and trace your letters and pick whatever color you want to draw on your jet, well for <Student> coming over and saying, "Hey, <Student>, do you understand what we have to do now in class?" it doesn't take much to confide in a child just to make sure that they know what they have to do. That little small moment of confirming is extreme motivation for <Student>.

...

That on they can want to actually do all of the work, just knowing that someone is providing that connection of, "Hey, you know what, this person is watching. They want to see me get my work done." <Student> is excited from that motivation.

Q: Does <Student> need that for every assignment?

A: I wouldn't say every assignment but if he has never got that connection with you then you can expect to have some failed experienced then.

Q: ... does the teacher then have to go over and repeat it specifically to

<Student> to get him to understand on his level?

A: Not every time, but if you build this experience with him of a rapport then you can expect to have less broken connections with <Student> of you not having to repeat or even coming to confirm because he has finally found a connection with you of knowing, "She is watching. She is looking. She wants me to do my work. She is actually even asking of me, identifying self, he, do I know." Like those connections of asking him and not talking to him but talking with him, like that means a lot to <Student>, you know, to know that you want to make sure he is doing his work. He wants that. That's actually what he wants. But if he feels like, "Hey, just do the tracing of this and then come back when you're finished," if he doesn't feel that connect and he has never had a connect with you then you are probably not going to have him finish his work because he doesn't feel attended to.

Transcript 326:11 - 328:5¹¹.

The environment that J.H. is describing, where the Student is likely to learn the best, is the ECSE classroom. It is there that the Student has reinforcement and one-on-one instruction and supervision. J.H. is correct in her assertion that the Student is likely to get lost when he doesn't feel attended to; this is what is likely to occur in a general education Kindergarten rather than the ECSE classroom.

Student Strengths

██████████ is a happy and energetic child.

Parent/Guardian Concerns

On the parent input form, ██████████ reported that she is concerned with ██████████ interaction with peers, his ability to express how he feels, and his ability to follow directions. ██████████ stated that ██████████ hits in response to others hitting him or hits because that is what he has learned from others. ██████████ stated that she feels ██████████ is copying behavior from other students in the class. She also stated that ██████████ often does not attend to adults who he is not familiar with. Mr. ██████████ added that ██████████ gets excited and needs to get his energy refocused. ██████████ feels that he is isolated and wants him to be socialized while in the class. She believes that ██████████ is focused on being separated from the class. She also stated that she wants ██████████ to be heard that other students have hit him. She believes that the teacher isn't hearing what ██████████ is reporting or that he isn't comfortable telling the teacher he is being hit.

Current Evaluations

Fall 2017 NWEA scores:

Mathematics - 7th

Reading - 31st

50th percentile is average for grade level

Exhibit I.

34 CFR §300.116(c) requires that a child with a disability be "educated in the school that he or she would attend if nondisabled" unless "the IEP ... requires some other

¹¹ Transcribed exactly - <sic> throughout.

arrangement.” Here the Student clearly requires an arrangement other than a general education Kindergarten. 34 CFR §300.116(d) requires consideration of “any potential harmful effect on the child or on the quality of services that he or she needs”. Here the placement of the Student in a general education Kindergarten would be harmful to the Student’s educational needs and would provide a lower quality of service than continued placement in the ECSE classroom. Finally, 34 §CFR 300.116(e) requires that a disabled child be educated in the general education classroom if that can be accomplished with only “needed modifications in the general education curriculum.” Here, however, that is simply not possible. The Student needs all the supports provided in the ECSE classroom; supports that are simply not available in the general education Kindergarten. There was no evidence presented to show just what level of accommodations would be necessary to meet all the Student’s needs in the general education Kindergarten; however they would be significant and so closely resemble the ECSE classroom as to make placement in the ECSE classroom more appropriate.

Petitioner J.H. is clearly trying to do what is best for her son and is advocating for him the best way that she knows how. This is admirable. She earnestly and honestly believes that the general education Kindergarten is a better environment for both herself as the parent and for her son’s educational needs. Unfortunately, her desire to have what is best for her son and a more challenging environment for him is likely to impede his abilities to receive the support, counseling, and one-on-one instruction that is so beneficial to him. The best placement for the Student is the ECSE classroom where he will be provided the supports that he needs and that both he and his mother desire. The Student’s language deficits prohibit his success in a general education Kindergarten.

Adverse Impact _____ he has heard before, but has nothing to do with the current situation.
_____ language deficits negatively impact his ability to process, comprehend, retain, or integrate spoken language. These deficits impair the ability to follow directions, complete assignments, express thoughts and ideas, and be organized.
Area of Need _____

Exhibit I.

The evidence shows that the ECSE classroom at Barth Elementary in the Respondent district is an amazing educational environment. There is a teacher and two aides working with only six students in the afternoon session. This two students to one adult ratio is an excellent placement for the Student. Although communication could be improved, the evidence submitted indicated that these communication issues were relatively isolated, partially due to a teacher’s illness, and are easily corrected.

The issue to be decided, and the standard to be followed is whether the Student’s current IEP and trial placement is appropriate and whether that placement is fully implementing his IEP, which it is. It is truly unfortunate that J.H. is unhappy with her child’s placement. The evidence here, though, shows that B.H. is receiving a free appropriate public education with his trial placement (Exhibits J and K) in the ECSE classroom at Barth Elementary. This is what the law requires. Dr. Farmer’s

assessment that Student needs to be in the ECSE classroom receiving the supports that the ECSE classroom provides is entirely correct.

Impressions:

██████████ appears to be currently struggling in the areas of Social, Fine Motor, and Communication. ██████████ has been identified as a student with a Speech and Language Impairment and currently has an IEP to address communication concerns. It is likely that the speech and language impairment is effecting the social domain and that current programming is sufficient with the ECSE classroom teacher providing social modelling and monitoring progress.
Exhibit L.

There was no evidence presented to show that the Student requires services for an extended school year. The parties are encouraged to discuss this matter at subsequent IEPs and provide those services to the Student as necessary. There was no evidence presented to show that the Student requires any adaptive equipment; the evidence shows that, to the contrary, the Student has sufficient communication skills that such adaptive devices are not required to allow him to participate in the educational curriculum.

The Petitioner is encouraged to continue to advocate for her son and to ensure that all of her son's needs are being fully met at his placement in the ECSE Classroom for the remainder of this year and his future educational placements. The Petitioner is cautioned to advocate based on her son's needs and, in her son's best interests, rather than her own needs and best interests. Based on the evidence presented at the hearing, the staff at the Respondent school district truly wants what is best for B.H. and desires to fully and completely implement B.H.'s IEP as best they can. All the parties are encouraged to continue to communicate their needs and desires with each other in order to best serve the Petitioners and to educate B.H. The undersigned Administrative Law Judge wishes all the parties well in this important, and indeed essential, endeavor.

CONCLUSION

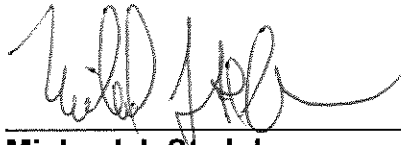
- A. The proper placement for the Student for the remainder of the 2017-2018 school year is the ECSE classroom at Barth Elementary in the Respondent school district.
- B. The Student is not entitled to compensatory education for the time period from November 2017 through the present because the Petitioner voluntarily chose not to enroll the Student in the Respondent district from November 2017 through March of 2018 and because the Respondent has been providing a free appropriate public education to the Student since March of 2018.
- C. The Student is not entitled to services for the extended school year.
- D. The Student is not entitled to adaptive equipment.

ORDER

NOW, THEREFORE, IT IS ORDERED Petitioners' complaint is dismissed.

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

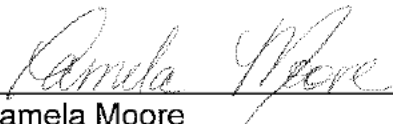
A party aggrieved by this decision may seek judicial review by filing an action in a court of competent jurisdiction within 90 days of the date of this order.



Michael J. St. John
Administrative Law Judge

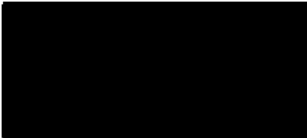
PROOF OF SERVICE

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 24th day of May, 2018.



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