

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

**IN THE MATTER OF:**

**J.D.R. o/b/o E.D.,  
Petitioner**

**v**

**Saginaw Township Community Schools,  
Respondent**

**Docket No.: 18-005075**

**Case No.: 18-00027**

**Agency: Education**

**Case Type: ED Sp Ed Regular**

**Filing Type: Appeal**

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**Issued and entered  
this 13<sup>th</sup> day of July, 2018  
by: Kandra Robbins  
Administrative Law Judge**

**DECISION AND ORDER**

**PROCEDURAL HISTORY**

This matter concerns a due process hearing request/complaint under the Individuals with Disabilities Education Act (IDEA) 20 USC 1400 et seq. On or about January 12, 2018, Petitioner filed a Due Process Hearing Request with the District. However, Petitioner did not file the due process request/complaint with the Michigan Department of Education (MDE) until March 20, 2018. 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.

On March 22, 2018, a Scheduling Order was issued scheduling a Prehearing Conference for April 4, 2018. On April 4, 2018, the Prehearing Conference was held as scheduled. As part of the Prehearing Conference, May 22 through 24, 2018 were selected as the dates for the hearing and the deadlines for the exchange of witness and exhibit lists were established. On May 16, 2018, Petitioner filed a Request to Adjourn the scheduled hearing. On May 18, 2018, a Prehearing Conference was held to address Petitioner's request. The request for adjournment was denied.

On May 22, 2018, the hearing was convened as scheduled. Petitioner J.D.R. appeared on her own behalf. Attorney Jeffrey Butler and Director of Special Education Chantel Mozden appeared on behalf of Respondents.

The following exhibit was offered by Petitioner and admitted into evidence unless otherwise indicated:

1. Petitioner Exhibits 1 and 2 were not offered.
2. Petitioner Exhibit 3 is an email and teacher recommendation for Camp Discovery.

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

1. Respondent Exhibit A is an Individualized Education Program (IEP), dated December 18, 2017.
2. Respondent Exhibit B is an Individualized Education Program, dated November 2, 2017.
3. Respondent Exhibit C is an Individualized Education Program, dated December 5, 2016.
4. Respondent Exhibit D is an Individualized Education Program, dated December 10, 2015.
5. Respondent Exhibit E is an Individualized Education Program, dated December 16, 2014.
6. Respondent Exhibit F is an Individualized Education Program, dated December 17, 2013.
7. Respondent Exhibit G is an Individualized Education Program, dated January 2, 2013.
8. Respondent Exhibit H is an Individualized Education Program, dated January 4, 2012.
9. Respondent Exhibit I is an Individualized Education Program, dated May 24, 2011.
10. Respondent Exhibit J is an Individualized Education Program, dated November 16, 2010.
11. Respondent Exhibit K is Previous Enrollment/ Temporary Placement Forms.

12. Respondent Exhibit L is a Review of Existing Evaluation Data (REED) and Evaluation Plan, dated November 7, 2017.
13. Respondent Exhibit M is a Review of Existing Evaluation Data and Evaluation Plan, dated December 17, 2013.
14. Respondent Exhibit N is a Review of Existing Evaluation Data and Evaluation Plan, dated November 17, 2011.
15. Respondent Exhibit O is a Psychoeducational Report, dated November 1, 2017.
16. Respondent Exhibit P is a Saginaw Intermediate School District Occupational Therapy Initial Evaluation, dated November 17, 2017.
17. Respondent Exhibit Q is a Saginaw Intermediate School District Physical Therapy Assessment, dated November 10, 2017.
18. Respondent Exhibit R is a Psychoeducational Report, dated December 15, 2014.
19. Respondent Exhibit S is a Multidisciplinary Evaluation Report, dated January 3, 2012.
20. Respondent Exhibit T is a Delta Psychological and Neurobehavioral Services Neuropsychological Evaluation, dated February 23, 2011.
21. Respondent Exhibit U is an Independent Data Summary Report from November 6, 2017 to December 8, 2017.
22. Respondent Exhibit V is Student Independence Data Daily sheets for September 12, 2017 through May 4, 2018.
23. Respondent Exhibit W is Behavior charting for Student completed by Homebound Teacher in 2018.
24. Respondent Exhibit X is Daily Reports related to Learning Targets from November 6, 2017 through December 15, 2017.
25. Respondent Exhibit Y is Behavior Data and Functional Behavioral Analysis (FBA) from November 15, 2017 through December 20, 2017.
26. Respondent Exhibit Z is resumes from various staff witnesses.

27. Respondent Exhibit AA is the Data Points for May 2018.

The following individuals<sup>1</sup> testified in this matter:

1. Adam Kanine, Special Education Teacher
2. Chantel Mozden, Special Education Director
3. Jamie Wager, School Psychologist
4. DeeDee Boyd, Special Education Teacher
5. Jennifer Scott, Para-professional
6. Elizabeth Lovasz, Daycare provider
7. Cheryl Taylor, Millet Learning Center School Principal
8. Carlee Giordano, Daycare provider
9. Candice Ahrens, Millet Learning Center Special Education Teacher
10. Leonard Miller, Saginaw ISD Homebound Special Education Teacher
11. Victoria Wandgmacher, Principal White Pine Middle School
12. Sue Skulley, Assistant Principal White Pine Middle School
13. T.D., father of Student
14. J.D.R., Petitioner
15. Kathryn Foster-Dupris, Family Friend/ Carrolton Schools Teacher

At the end of the hearing, it was determined that the parties would be permitted to file written briefs and closing arguments by June 22, 2018 and replies by July 2, 2018. Each party filed a timely closing argument.

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<sup>1</sup> It is noted for the record that although Student did not testify in this matter, she did attend part of one hearing day. Student introduced herself to the undersigned ALJ and the court reporter. Student was very pleasant. Student suffered a seizure resulting in a short break. [Tr. Vol. III, pg. 522-523]

**ISSUE and APPLICABLE LAW**

During the Prehearing Conference, the following issue was identified for the hearing:

- A. Is the Moderate Cognitive Impairment classroom at Millet Learning Center placement determined by the Individualized Education Program Team on December 18, 2017 the least restrictive environment for Student?

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).

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.

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

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

In determining whether the District provided a free appropriate public education in the least restrictive environment for the student in this case, it must first be asked whether the District has complied with the procedures set forth in the IDEA in developing the IEP, and second, whether the IEP developed through those procedures was reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. *Endrew F.* 137 S. Ct. 988.

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:

Student is currently 13 years old. Student is eligible for special education services as a student with a Cognitive Impairment under MARSE 340.1705.

Student has been diagnosed with Lennox-Gastaut Syndrome (LGS). This is a form of epilepsy that is characterized by multiple types of seizures and intellectual disability. [Tr. Vol. III, pgs. 570 and 573]

In 2011, Dr. James Olsen completed a Neuropsychological Evaluation of Student. As part of the evaluation, Dr. Olsen noted that Student was born with a bilateral cleft palate as well as a "brain infection". There were oxygen deficiencies at the time of birth. An MRI completed in 2008 suggested difficulties with white matter suggesting myelination delays. Student experienced significant developmental delays. [Resp. Ex. T]

As part of the evaluation, Dr. Olsen administered several tests including the McCarthy Skills of Children's Abilities; Wechsler Individual Achievement Test-II, Word Reading; Wide Range Assessment of Memory and Learning-Screener; Expressive One-Word Picture Vocabulary Test-Revised; Peabody Picture Vocabulary Test-III; Visual Motor Integration Test; Gordon Diagnostic System; Tapping Test; Grip Strength Test; Grooved Pegboard Test; Token Test for Children; Test of Auditory Processing Skills-3; Personality Inventory for Children-2; and BASC-2 Teacher Rating Scale. Dr. Olsen diagnosed Student with ADHD Combined Type, Cognitive Disorder NOS, and Expressive and Receptive Language Deficits. [Resp. Ex. T]

During the 2010/2011 school year, Student was enrolled in kindergarten and received special education services. Student has continued to have an annual IEP and receive special education services for each year she has been enrolled in school. [Resp. Exs. J, I, H, G, F, E, D, C and B]

In December 2014, a Psychoeducational Evaluation was completed by Jaime Wager<sup>2</sup>. As part of the Evaluation, Ms. Wager administered the following assessments: record review; Parent input; Teacher input; Observations; Curriculum-based Assessments; Wechsler Abbreviated Scale of Intelligence-Second Edition (WASI-II); Kaufman Test of Educational Achievement-Second Edition (KTEA-II); and the Vineland Adaptive Behavior Scales-Second Edition (Vineland-II). [Resp. Ex. R]

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<sup>2</sup> Ms. Wager is a certified school psychologist with the Michigan Department of Education. She has a Bachelor of Science degree in Psychology, a Master of Arts degree in School Psychology, and a Specialist Degree in School Psychology from Central Michigan University. [Resp. Ex. Z]



Based on the WASI-II, Student's school related intellectual functioning is in the Extremely low range. She obtained a Full Scale IQ of 47 which is less than 0.1 percentile rank. Based on the KTEA-II, Student has difficulty recognizing and decoding words, understanding reading content, computing math operations, and applying math skills to everyday problems. Based on the Vineland-II, Student's adaptive skills at home and at school are low when compared to other children her age. [Resp. Ex. R]

Beginning in the 2016/2017 School Year, Student attended the White Pine Middle School in the Saginaw Township Community Schools. She was placed in the Mild Cognitively Impaired (MiCI) Classroom taught by DeeDee Boyd. Student remained in Ms. Boyd's classroom until she stopped attending school. [Resp. Ex. C / Tr. Vol. I, pg. 261]

The MiCI classroom consisted of Ms. Boyd and a para-professional, Ms. Jen, and approximately 19 students. A second para-professional was added to the classroom because of the extensive medical needs of Student. [Tr. Vol. I, pg. 262]

The White Pine Middle School consists of grades 6, 7 and 8. The middle school consists of six separate buildings in a California or Florida style campus. There is a building for each grade, an auditorium, a gymnasium, and center building housing the cafeteria, library and main offices. There are approximately 1,050 students and 100 staff members on the campus. Besides the general education classrooms, White Pine Middle School also hosts nine special education programs including a Mild Cognitively Impaired classroom. The School District nurse, a part-time employee, has an office on the campus. [Tr. Vol. II, pgs. 481-483]

During the 2016/2017 school year, the MiCI classroom was located in the building that housed the 7th grade students. At the end of the 2017 school year, the MiCI classroom was relocated to the building that housed the 6th grade students. The relocation was to place the MiCI classroom closer to the ASD classroom to allow for better co-ordination/support for the MiCI and ASD teachers. [Tr. Vol. I, pg. 278]

On December 5, 2016, an IEP team meeting was held to develop an annual IEP for Student. The IEP determined that Student would attend the Cognitive Impaired classroom located at the White Pine Middle School for 20-25 hours per week. She would receive 5-10 hours of general education instruction per week. There were numerous supplementary aids and services implemented including School Social Work Consultation, Speech/Language Consultation, and a Personal Care Assistant for 6 hours daily. [Resp. Ex. C]

In May 2017, Student was completing the 7<sup>th</sup> grade. The District had concerns regarding Student's decrease in engagement with both academics and with her peers; the District was also concerned with Student's academic performance. Ms. Mozden, Ms. Boyd, Student's mother and father participated in a meeting to discuss these

issues; the District also expressed their concerns regarding Student's progress. [Tr. Vol. I, pg. 44]

Ms. Boyd testified that there was an increase in Student's seizures as well as regression in Student's performance. [Tr. Vol. I, pgs. 247-249]

Ms. Boyd<sup>3</sup> was Student's teacher for approximately 1 ½ school years. During that time, she observed Student's academic abilities deteriorate and her ability to ambulate around the building also deteriorate. [Tr. Vol. I, pg. 265]

It became difficult for Student to stand up straight and walk. Student required assistance. She would walk into beams or hit the doorway. Student would fall including falling from a sitting position. [Tr. Vol. I, pgs. 265-266]

When Student suffered a seizure, the other students were removed from the classroom to protect Student's dignity and because witnessing the seizures frightened the other students. [Tr. Vol. I, pg. 267-268]

Ms. Boyd testified that Student did not seek out her general education peers nor did they seek her out. She did not have any relationship with any of the non-disabled peers attending the middle school. [Tr. Vol. I, pg. 269]

Between September 13, 2017 and October 5, 2017, Student had four seizures at school. Each seizure required the school medical team to be called and the classroom cleared of all other students. On each of these four occasions the Student left school after the seizure and usually missed the next day as well. [Resp. Ex. L]

On November 2, 2017, an IEP Team meeting was held to conduct the annual Re-evaluation IEP. Student; both parents; School Psychologist Jamie Wager, Speech and Language Pathologist Kristi Stryclecki; District Representative Chantel Mozden; White Pine Middle School Special Education Provider DeeDee Boyd; Millet Learning Center Special Education Teacher Candice Ahrens; General Education Teacher K. Kulhanch; Amy Idzior, special education teacher and another general education teacher participated. [Resp. Ex. B]

The IEP Team used the technique "Running the Board", a communication tool developed as part of the Statewide Autism Resources and Training (START) to develop the November IEP. [Tr. Vol. I, pg. 144]

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<sup>3</sup> Ms. Boyd is a certified teacher with an endorsement K-5 all subjects, K-8 all subjects self-contained classroom, Autism Spectrum Disorder K-12, Cognitive Impairment K-12, and Emotional Impairment K-12. She has a Bachelor of Arts degree in Elementary Education from Central Michigan University, and a Master of Arts in Teaching from Saginaw Valley State University.

This method was utilized to ensure that all areas of concern were addressed. The District had significant concerns about Student's regression when the IEP team met. [Tr. Vol. I, pg. 144]

The November IEP team determined that Student would remain in the MiCI classroom at White Pine Middle School for 25-30 hours per week. However, the Team did discuss the Moderate Cognitive Impaired classroom located at the Millet Learning Center. [Resp. Ex. B]

Because of several concerns that were discussed during the November IEP meeting, a REED was developed by Petitioner, Ms. Boyd, Ms. Johnson, and Ms. Mozden on November 10, 2017. [Resp. Ex. L]

The REED Team noted that during the fall of 2017, Student had difficulty with not wanting to work. She would easily lose interest in the task and would claim she was bored. She became more vocal blurting out "I don't want to do this, banging hands on the table, and becoming rude to staff and peers. She becomes impatient with the learning process making it difficult for her to wait for long periods leading to disruption to the learning process. She becomes impatient when trying to gain the attention of staff, she will leave her seat, and will trip over chairs or bump into tables. The REED Team noted that she is having difficulty with her gross and fine motor skills. She struggles with walking independently. While she is able to write, her fine motor skills have regressed as she is having difficulty judging the size, writing extremely large with overlapping her words. She has difficulty with zipping her coat, taking the top off her milk, and opening her silverware and ketchup packets. [Resp. Ex. L]

The REED called for additional evaluations consisting of a Functional Behavioral Assessment (FBA), a Physical Therapy (PT) evaluation, and an Occupational Therapy (OT) evaluation. On November 8, 2017, Petitioner consented to the additional evaluations determined by the REED team. [Resp. Ex. L]

Julie Ricard<sup>4</sup>, Occupational Therapist, completed an Occupational Therapy Initial Evaluation. As part of the evaluation, Ms. Ricard administered the following tests: Manual Muscle testing, bilateral upper extremities; Range of motion testing, bilateral upper extremities; Bruininck's Oseretsky Test of Motor Proficiency (BOT-2), subtests 1-3; Goodenough Draw A Person test; and writing sample. [Resp. Ex. P]

Ms. Ricard found that Student shows intact upper extremity range of motion and strength to perform fine motor skills yet is performing fine motor manipulative skills at the 4-year level, with printing/drawing skills at the Kindergarten to 1<sup>st</sup> grade level. Fine motor skill performance is usually dependent upon attention, cognition, interest level

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<sup>4</sup> Ms. Ricard is a licensed Occupational Therapist with the Michigan Department of Licensing and Regulatory Affairs. [Resp. Ex. Z]

along with muscle ability and coordination. It is typical to expect fine motor skill performance to be commensurate with cognitive levels as a general rule if there are no other physical limitations to limit the student. [Resp. Ex. P]

Ms. Ricard recommended that Student would benefit from some adaptations for her fine motor and daily living skills to improve her success in school. Staff assist will be necessary for safety and encouraging as much independence as she is able to achieve. [Resp. Ex. P]

Jill Eustace<sup>5</sup>, Physical Therapist, completed a Physical Therapy Assessment of Student. Ms. Eustace found that Student demonstrates functional range of motion and strength in her lower extremities. Her gait is often unsteady, limiting her independence at school. Student lost her balance repeatedly throughout PT session. Student fell multiple times into Ms. Eustace and required assistance to maintain balance. At other times she is able to stand without balance loss however without warning she loses her balance. Sitting balance also varied throughout the session as evidence by Student stabilizing her upper extremity on table at times. Classroom staff are very attentive to Student's needs and closely monitor for signs of seizure. Ms. Eustace noted that Student requires close supervision throughout her day for safety to assist with balance and monitoring potential seizure activity. Ms. Eustace noted that Student would benefit from environmental adaptations for safety such as areas free of clutter to decrease her risk of fall. [Resp. Ex. P]

Ms. Eustace also noted that during classroom observations Student did not seek out peers. Student required prompting by staff to interact with peers in PE class and MiCI classroom. [Resp. Ex. P]

In November 2017, Ms. Wager completed an updated Psychoeducational evaluation. As part of the evaluation, Ms. Wager administered the following assessments: Record Review; Parental input; Teacher input; WASI-II the Kaufman Test of Educational Achievement-Third Edition (KTEA-3); and the Adaptive Behavior Assessment System-Third Edition (ABAS-3).

Ms. Wager noted that Petitioner reported Student has epilepsy and takes Onfi, Briviact, Fycompa, and birth control for it. Student has a Vagus Nerve Stimulator (VNS) implant. She takes Risperdal and Abilify for behavior.

On the WASI-II, Student obtained a Full-Scale IQ of 46 indicating that her school - related intellectual functioning is in the Moderate Cognitively Impaired range. This is less than 0.1 percentile rank. Based on the KTEA-3, Student has difficulty recognizing

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<sup>5</sup> Ms. Eustace is a licensed Physical Therapist with the Michigan Department of Licensing and Regulatory Affairs. She received a Bachelor of Science degree in Health Science and a Master of Physical Therapy from the University of Michigan-Flint. [Resp. Ex. Z]

and decoding words, understanding reading content, computing math operations, and applying math skills to everyday problems. Both the parent and teacher ratings on the ABAS-3 suggest that Student's adaptive skills at home and at school are extremely low when compared to other children her age. [Resp. Ex. O]

On December 18, 2017, a new IEP team meeting was held to consider the new evaluations completed in November 2017. The following individuals participated in the IEP team meeting: Petitioner; Student's father; Julie Ricard, Occupational Therapist; Chantel Mozden, District Representative; Lisa Johnson, general education teacher; Rebecca Stewart, School Social Worker; Kristi Strzelecki, Speech Language Pathologist; DeeDee Boyd, Special Education Teacher; Katrina Kauffold, School Social Worker; Jill Eustace, Physical Therapist; and Cheryl Taylor, Principal Millet Learning Center. [Resp. Ex. A]

As part of the Present Level of Academic Achievement and Functional Performance (PLAAFP), Student's strengths were identified as being loving and friendly, going up to people and saying "hi". She enjoys drawing butterflies and her cats. She likes to play games such as Uno and Connect 4. [Resp. Ex. A]

As part of the PLAAFP, the parents shared the following concerns: for Student to understand the safety of saying "hi" to people; academic success; Student has had some medication changes since the 2016/2017 school year; she has been referred to a psychiatrist; learning to make friends; and decrease in IQ scores. [Resp. Ex. A]

As part of the PLAAFP, Student's functional reading skills are around the second-grade level. Student currently has a reading comprehension at the first-grade level. Student is spelling words at the kindergarten/first-grade level. Student struggles with writing skills. She is unable to produce 1-2 sentences of her own creation. Student is functioning at the kindergarten/first-grade level in math. Student is unable to identify coins and state their value. Student is able to write numbers that the minute/hour hand are pointing to. [Resp. Ex. A]

Student's current academic abilities prevent her from making the same growth rate as her same age peers in academic areas. There has been regression in listening comprehension, word recognition, and spelling. Student's oral reading scores have improved while her math skills have maintained at the same independent level. [Resp. Ex. A]

The IEP team determined that Student needs systematic instruction in a small group setting in order to address her academic needs in the areas of reading, math, social studies, science and daily living skills. She needs programming that focuses on functional academic and job skills where the tasks are repeated and direct instruction on a frequent basis. [Resp. Ex. A]

Student's medical needs adversely affect her educational performance. A seizure plan has been developed in coordination with Student's physicians, parents, and school staff. [Resp. Ex. A]

The IEP team developed four goals for Student in the December 2017 IEP. The first goal is a Common Core Essential Elements Mathematic goal. Student's baseline functioning is between the Kindergarten/first-grade level. The goal is that by December 17, 2018, Student will improve her mathematical skills to the first-grade level in the area of time and addition on work assignments through daily observation. This goal is supported by two short-term objectives. The first objective is that Student will independently complete basic addition problems using a calculator with 75% accuracy on work samples by teacher observation. The second objective is that Student will verbally tell time to the hour and half-hour with 75% accuracy on work samples by teacher observation. [Resp. Ex. A]

The second goal is a Common Core Essential Element English Language Arts goal. Student's baseline functioning indicates that Student reads around the first/second-grade level. The goal is that by December 17, 2018, Student will improve her reading comprehension skills to a second-grade level on daily assignments and activities. This goal is supported by two short-term objectives. The first objective is that when given no more than three choices, Student will choose, either verbally or by pointing, a book she can independently read with 75% accuracy by teacher observation. The second objective is that when given visual choices, Student will verbally complete comprehension questions from stories read from the Unique Learning System with 75% accuracy by teacher observation. [Resp. Ex. A]

The third goal is from a CES-Personal Management Elementary-Responsibility goal specifically to identify and demonstrate good study and work habits. As a baseline, data indicates that 26% of the time, Student could not complete the task with extreme modifications and supports, 33% of the time she required physical prompting (hand over hand), 18% of the time Student required visual or verbal one-on-one prompting, 5% of the time Student could do the task independently. The goal is that by December 17, 2018, student will improve her personal work habits on daily assignments and activities to completing 75% of the time with visual or verbal prompting on daily work, assessments, and observation. This goal is supported by two short-term objectives. The first is that given a visual schedule, Student will begin and complete an assigned work tasks, containing no more than three steps with no more than three verbal prompts with 75% accuracy as observed by Teacher. The second objective is that Student will complete a functional job task of delivering to a location within the school environment with verbal and visual prompting following 2-3 step directions for three out of four opportunities as observed by the Teacher. [Resp. Ex. A]

The fourth goal addresses social interaction. As a baseline, it was noted that Student struggles with waiting her turn during classroom and social activities. She struggles with social interaction skills. She can greet others and say "hi" but not consistently or appropriately. She will greet people that are new to her or to the classroom however she does not greet her peers that she sees daily. The goal is that when given visual social interaction strategies/stories/cue cards, Student will increase her ability to take turns during school activities and appropriately greet school peers on a daily basis at 75% or three out of four opportunities/trials as observed by teacher or social worker. This goal is supported by three short-term objectives. The first is that given structured small group practices, Student will increase her ability to take turns independently given one visual cue during academic and social activities in three out of four opportunities/trials. The second objective is that given structured small group practice, Student will visually or verbally identify 2-3 types of greetings and be able to (visually/verbally) sort what type of greeting is appropriate in what setting, and with whom, in three out of four opportunities. The third objective is that when given a visual/verbal cue, Student will establish eye contact and greet at least one peer across at least two different environments within the school setting in three out of four opportunities. [Resp. Ex. A]

The IEP team determined that a number of supplementary aids and services would be implemented to support Student including use of visual aids; administration of assessment individually or in a small group; may ask for clarification of directions; have teacher repeat directions; assessment in an alternate location; receive credit/no credit; social stories; differentiated output hierarchy; visual timer; large size graph paper; air filled cushion; chair with arm rests; environment clear of extra distractions; calculator; Personal Care Services and assistance from paraprofessional. Other supports include Positive Behavioral reinforcement; Peer to Peer support; OT consultation for classroom adaptations; PT consultation for classroom adaptations; Nursing services and speech and language consult in case of any oral surgeries or dental procedures. [Resp. Ex. A]

The IEP team determined that Student will receive School Social Worker services for 2-4 twenty-minute sessions per month. It was determined that Student would remain in the MiCI classroom until the winter break. Upon return to school in January, Student would attend the MoCI classroom at Millet Learning Center for six hours per day. [Resp. Ex. A]

The IEP team explicitly stated that Student would not participate with non-disabled children in the regular class and activities, stating that Student's needs are best met through a center-based program that will provide her specialized instruction to meet her individual needs. [Resp. Ex. A]

The IEP team found that the MoCI classroom program includes specialized instruction within a small setting focusing on intense functional job skill and functional academic

instruction on a consistent and repetitive basis meeting Student's academic, behavioral, medical, and social/emotional needs. [Resp. Ex. A]

The IEP team found that because of Student's regression in academics and independence, the MiCI classroom could no longer meet Student's needs. [Resp. Ex. A]

The IEP team discussed homebound instruction. [Resp. Ex. A]

Homebound instruction is one of the most restrictive placements on the continuum. The Michigan Administrative Rules for Special Education requires that a licensed physician must provide verification of a medical impairment which requires the eligible special education student to be *confined* to the home. MARSE 340.1746 (emphasis added). There is nothing in the record to indicate that Student's medical condition requires that she be confined to her home. Therefore, homebound instruction is not permitted under the MARSE rules.

Student's medical condition has not required that she be confined to her home. Petitioner has had Student attend a Place for Grace daycare daily since the December 2017 IEP rather than send Student to school.

The Millet Learning Center consists of one building with 260 students all of whom are attending the Millet Learning Center. The program consists of six classroom programs including programs for students with severe cognitive impairment, moderate cognitive impairment, autism, emotional impairment, physical and otherwise health impairment. There are eight classrooms for the Autism program, one classroom for the Severely Emotional Impaired, and three classrooms for the Physical/Otherwise Health Impaired. There are five classrooms for the severe cognitive impairment program and six classrooms for the moderate cognitive impairment program. The classrooms are divided by age. There is a class for 6 – 12 years old, a class for 12- 14 years-old, a class for 15-17 years-old, and a class for 18-26 years old. [Tr. Vol. II, pgs. 364-367]

The Millet Learning Center has a gymnasium and a sensory room in the building. The building has a library and a new conference center space. [Tr. Vol. II, pg. 379]

The Millet Learning Center includes 92 professional staff consisting of teachers, para-professionals, speech and language pathologists, occupational therapists, physical therapists, and teacher consultants. The building also houses custodial, food service and secretarial staff. [Tr. Vol. II, pg. 368]

A school psychologist is available to the Millet Learning Center through the ISD. [Tr. Vol. II, pg. 368]



The Millet Learning Center has a full-time nursing staff consisting of two Registered Nurses, five LPNs and three health care aides. There are two nursing stations in the building. One RN office is in the wing of the building with the younger students. The second larger station is in the middle of the building. [Tr. Vol. II, pgs. 369-371]

The MoCI classroom at Millet Learning Center is taught by Candice Aherns. The classroom also has one teacher assistant for the classroom and another teacher assistant who has a one-to-one assignment within the classroom. [Tr. Vol. II, pg. 370]

Although the Millet Learning Center does not have general education peers in the building, there are be same age peers as the Student. [Tr. Vol. II, pg. 380]

Ms. Taylor testified that interacting with same age peers is particularly important to middle school students. She testified that this age group will start to blossom and show increased confidence in the smaller setting with peers who are also encouraging, and interacting is a benefit. [Tr. Vol. II, pg. 382]

Ms. Ahrens testified that she believes that there are benefits of interacting with similarly disabled peers during the middle school age. She testified that with all disabled peers in one classroom, no one is judging one another. There is no judgment and the staff all know how to work with students with cognitive challenges. She testified that the staff all want to push the students to the best of their abilities and they do not want people cutting them down while they are trying to push them to their best. She testified that the students are safe and can feel good about themselves. There can be negative consequences for (non-disabled) peer interaction. [Tr. Vol. II, pg. 445]

Ms. Ahrens testified that puberty is difficult for all students. Students with cognitive disabilities have the same experiences. Puberty is a tough time. Students know that they are different and can struggle. But at Millet its easier not to struggle because everybody is disabled although they may exhibit different abilities. [Tr. Vol. II, pg. 446]

The MoCI classroom uses a Unique Learning System (ULS) as one of the curriculums. Technology is embedded in the classroom curriculum. Ms. Ahrens<sup>6</sup> teaches language development and social skills in the classroom. [Tr. Vol. II, pg. 381]

Ms. Ahrens believes the Millet Learning Center would be an appropriate placement for Student. She testified that she uses adaptive teaching in the classroom. The building and population is significantly smaller than at White Pine Middle School. There are railings in the hallway. The MoCI class does not transition from classroom to classroom except for gym. There is nursing staff readily available for medical concerns. The

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<sup>6</sup> Ms. Aherns has a Bachelor of Science degree in education from Central Michigan University. She has a master's degree. She is certified to teach K-5 all subjects, K-8 all subjects in a self-contained classroom, Cognitive Impairment K-12 and Language Arts K-8. [Resp. Ex. Z / Tr. Vol. II, pg. 425]

classroom is smaller. Student was not successful in her placement at the MiCI classroom. Ms. Ahrens believed that Student would be successful in her classroom. [Tr. Vol. II, pgs. 443-449]

Mr. Leonard Miller is a certified teacher. As part of the agreed upon modified Stay-put, Mr. Miller has been providing instruction to Student at the Place for Grace daycare center twice a week for two hours at a time. [Tr. Vol. II, pgs. 454]

Mr. Miller testified that he believes the Millet Learning Center would be an appropriate placement for Student because of the nursing staff and the peer interaction Student would have. In addition, Student's academic functioning would be appropriate for the MoCI classroom. [Tr. Vol. II, pgs. 471-472]

Mr. Miller testified that the Millet Learning Center is like a big family. The staff know the students and they all work together to best benefit each child. [Tr. Vol. II, pg. 475]

Ms. Boyd testified that during the 2017/2018 school year, Student was not responding, specifically that it was hard for her to engage despite all the strategies used by staff. [Tr. Vol. I, pg. 244]

Ms. Boyd testified that Student did not seek out any relationship with non-disabled peers nor did any peers seek out Student.

Ms. Boyd testified that Student was having difficulty just moving around the classroom. The required transitions in the classroom building in addition to the transition to the other necessary buildings became quite a concern. [Tr. Vol. I, pgs. 280-281]

Ms. Boyd testified that during the time Student was in her classroom she has regressed in all areas: academic, social and physical. She testified that the MoCI classroom works on functional daily living skills, a necessity for Student. The peers in the MoCI classroom would be at Student's level both socially and academically. [Tr. Vol. I, pg. 283]

The other students in the MiCI classroom all function at a higher level than Student. [Tr. Vol. I, pg. 283]

Petitioner's father testified that he does not want Student to attend the Millet Learning Center. He stated that he believes that Student functions at a higher level than any of the students he has observed at Millet Learning Center.

Petitioner testified that she does not believe that the Millet Learning Center is appropriate for Student. She testified that she believes Student has not regressed as much as District staff have indicated. She believes that the Student is just refusing to

do work because she wants to spend time with Ms. Jen, the para-professional. [Tr. Vol. III, pg. 586]

With the onset of puberty, Student's seizures have increased in frequency and intensity. [Tr. Vol. III, pg. 575]

After a seizure, Student has difficulty functioning and needs assistance with walking. [Tr. Vol. III, pg. 579]

## **DISCUSSION**

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. It is clear from the record that Petitioner is a loving parent who wants the best for her child. She is a fierce advocate on her daughter's behalf. It is also clear from the record that the District staff who have worked with Student also want the best for Student.

In this matter, the District contends that the educational placement determined by the IEP team, the MoCI classroom, is the most appropriate placement for Student. The MoCI placement is more restrictive on the placement continuum than Student's previous educational placement (the MiCI classroom) although both placements are more restrictive than a general education placement. Petitioner contends that the MoCI classroom at the Millet Learning Center is not the least restrictive environment in which Student can receive an appropriate public education. Petitioner is requesting that Student remain in the MiCI classroom.

Petitioner contends that Student is regressing because the District has failed to provide the appropriate supports that would allow for Student to achieve academic success in the MiCI classroom. Petitioner contends that Student's behavior, specifically her refusal to complete tasks, has resulted in Student's regression of academic skills. Petitioner believes that the District is concerned about their ability to effectively handle the Student's epilepsy and therefore wants Student placed somewhere else so that it does not have to deal with Student's medical concerns.

Petitioner contends that Student's behavior is the result of the District's failure to implement any social worker services during the IEP implemented in December 2016. The evidence does not support Petitioner's contention that no social work services were provided to Student after the December 2016 IEP was implemented. The testimony of

the School Social Worker Ms. Stewart and Ms. Boyd indicate that school social work services were integrated into the classroom rather than provided one-to-one with Student. Ms. Stewart credibly testified that it made more sense to work on Student's peer-to-peer interaction with actual peers rather than social worker-to-Student. Therefore, the peer-to-peer instruction occurred in the classroom with the Student's peers. Student did in fact continue to receive instruction with peer interaction. It just occurred in the classroom as part of the larger group. Student did receive supports in this area. It appears that Petitioner did not understand that social work services continued to be implemented in the classroom with peers rather than outside the classroom in individual sessions with the Student. This was based on a recommendation of the social worker and a decision of the IEP team during an IEP team meeting to best meet Student's needs.

Petitioner contends that the District failed to utilize any behavioral supports with Student. Again, the record does not support Petitioner's contention. Although Student did not have a Behavioral Intervention Plan, Ms. Boyd and the classroom staff utilized the classroom Positive Behavioral Supports to support Student. The use of these supports was credibly testified to by both Ms. Boyd and Ms. Jen. They included positive verbal reinforcement, breaks and use of visuals. The IEPs also provided for several Positive Behavioral Supports that were routinely utilized. Petitioner has not shown that Student's failure to progress was the result of any failure on the part of District staff to implement behavior strategies. In fact, the testimony indicated that the strategies were successful to the extent that Student would re-engage in her work when the strategies were implemented. However, the strategies that focused on engagement would not change the fact that Student's academic skills were regressing. Although it is unclear from the record if the Student's regression was the result of the increased seizure activity, it was abundantly clear from the record that Student's skills have been regressing.

The District was concerned about this regression. Despite Petitioner's contention that she was "blind-sided" by the recommendation for Millet in November 2017, the District in fact held a meeting with Petitioner and Student's father in May of 2017. At that meeting, District staff expressed significant concerns to Petitioner regarding Student's lack of engagement and regression. At this time, it was discussed that other placement options might need to be considered in the future.

Petitioner contends that the MoCI placement was pre-determined by the District prior to the November 2017 IEP meeting. The record does not support this contention. While it is true that Ms. Ahrens was asked to observe Student in October as a possible referral, this does not mean that a placement decision was made. It is important that in making a placement decision, an IEP team has as much data as possible. The District staff were clearly concerned that from the end of the 2016/2017 school year and into the beginning of the 2017/2018 school year that Student continued to regress and lacked any

engagement. She did not engage in her academics and in fact had a marked decline in academic ability. The Millet Learning Center is on the continuum of placement for a student with cognitive impairments. It would be prudent to have MoCI staff observe Student to have their opinion and information during the next IEP meeting. MoCI staff would have the best information concerning their program. Every witness testified that, at the November 2017 IEP meeting, the IEP team thoroughly discussed all the data available regarding Student and her needs. Despite Petitioner's contention that the MoCI program had been pre-determined, the IEP team at that time did not place Student in the MoCI classroom. The November 2017 IEP clearly placed Student in the MiCI classroom in the White Pine Middle School. After the November 2017 IEP, additional data was determined to be necessary because of concerns raised by the Petitioner (specifically physical therapy and occupational therapy). The fact that the IEP team considered all the data, looked at the full continuum of placements, and ultimately placed Student in the MiCI classroom demonstrates that no predetermination occurred.

Upon completion of the additional assessments in November 2017, a new IEP team was called in December 2017. This is appropriate. The new information needed to be considered by an IEP team. Petitioner had notice of the IEP meeting. The IEP team consisted of the appropriate individuals in compliance with IDEA and the MARSE rules. All procedural protections were afforded to Petitioner in the development of this IEP.

Regulations provide that each District must ensure that 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.

The Sixth Circuit has held mainstreaming is not appropriate if: 1) the student with a disability would not benefit from mainstreaming; 2) any marginal benefit from mainstreaming would be outweighed by the benefits gained from services that could not feasibly be provided in the non-segregated setting; or 3) the student with a disability would be a disruptive force in the mainstream setting. *Roncker v Walter* (6<sup>th</sup> Cir. 1983, 464 US 864).

In this case, Petitioner does not argue that Student should be mainstreamed in the general education classroom. Petitioner acknowledges that Student's unique needs support placement in a more restrictive environment. The question in this matter is whether the more restrictive environment should be the MiCI classroom located at the White Pine Middle School campus or the MoCI classroom located at the Millet Learning Center.

It is clear from the record that the IEP team reviewed Student's unique needs in making their determination. The Team looked at her academic engagement and progress; her

daily living functional skills; her medical condition; her physical therapy and occupational therapy skills and needs; and her social / emotional needs.

The record supports the IEP team's determination that the Millet Learning Center's physical location would be beneficial to Student. The hallways have railings to assist with support. The record supports the findings that Student has difficulty ambulating. The Millet Learning Center is a smaller physical space reducing the amount of ambulating necessary by Student. The physical space would eliminate the need to move from one building to another throughout the day as is required at larger campus of the White Pine Middle School.

The MoCI program has the necessary adaptations necessary to meet the physical therapists and occupational therapist's recommendations as to Student's needs. The MoCI program incorporates the necessary daily living functions into the curriculum. Student needs daily living supports and having that as part of the curriculum would only be beneficial to Student. Based on the evidence submitted by Ms. Boyd, Mr. Miller and Ms. Aherns, the MiCI classroom has not permitted Student to make academic progress. The recommendations for Student's academic needs included smaller instruction groups with differentiated instruction. Student has made no progress in the MiCI classroom despite having differentiated instruction and a one-to-one para-professional to assist with the academic work. She has made improvement during the one-to-one instruction she has received by Mr. Miller during her stay-put placement. The MoCI classroom is smaller than the MiCI classroom and would allow for more individualized instruction to permit Student to continue to build on the success she has achieved with the one-to-one instruction. The record clearly indicates that Student has not had academic success in the MiCI classroom for quite some time.

The District began raising its concerns in May 2017. Ms. Boyd's testimony clearly indicated that she was aware and very concerned about Student. She testified that over the 1 ½ years that Student was in her classroom she observed significant regression and lack of engagement. She repeatedly raised these concerns. In response to Ms. Boyd's concerns several interventions were implemented including differentiated instruction, the use of the differentiated hierarchy system, one-to-one para-professional, visual schedules, among other individualized supports. The record indicates that despite these interventions, Student continued to regress and lack engagement in the academic work. Student was far below the abilities of her classmates. The MiCI classroom clearly was not meeting Student's needs.

Petitioner states that she is concerned about the placement because it would not permit Student to have any interaction with non-disabled peers. Petitioner and Student's father raised concerns during the November and December 2017 IEPs regarding Student's social skills. Although this is a legitimate concern, it is only one of several concerns to be weighed. While Petitioner does have access to non-disabled peers in the MiCI

classroom, she does not really interact with them (and they do not interact with her). Student has not had any meaningful engagement with her non-disabled peers while in the MiCI classroom at White Pine Middle School. Ms. Boyd testified that Student does not make any effort to engage with her peers nor do her peers make any attempt to engage with her.

Student does much better interacting with disabled peers and will have additional opportunities to do so in the MoCI classroom. Further, the Student will experience less judgment for her disability amongst her similarly disabled peers in the MoCI classroom than the MiCI classroom. This is particularly important for a middle school student where such judgment is both the most frequent and most damaging to students. It is difficult to see how interacting with same age peers even if disabled would not be appropriate for Student. Petitioner articulates that she wants Student to have better social skills to interact with her peers but then argues that interaction with disabled same age peers would not assist her with this skill. Based on the evidence submitted, the MoCI placement would allow for Student to have regular interaction with same-age peers. This would assist Student with the necessary social skills identified as a need for her.

While Student has been in a modified stay-put placement, she has been attending a Place for Grace daycare where, based on the evidence presented, Student has had no interaction with same age non-disabled peers at the daycare. Student spends her day with infants and toddlers. The MoCI classroom is going to provide additional opportunities for socialization and interaction that have not been present in the Student's daycare placement.

Student has significant medical issues particularly the epilepsy with the seizures. Petitioner clearly understands Student's medical needs and is a strong advocate for Student. Petitioner herself acknowledged that with the onset of puberty, Student's seizures have greatly increased. Student struggles with functioning after a seizure. Student's behavior challenges have also increased. Petitioner testified that some of the behaviors are side-effects from Student's medications. Student needs assistance walking after a seizure. The Millet Learning Center has a full-time nursing staff on site. The staff at Millet Learning Center have experience with multiple students who suffer from seizures. At White Pine Middle School, Student is unique with the seizures she suffers. The only nurse at White Pine is a part-time employee. The staff is not as familiar with the needs / protocols to respond to seizures. While no one is saying that Student needs to have a full-time nurse accompany her every movement, the Staff at Millet Learning Center are better equipped and trained to respond to any of Student's medical needs during the school day. This is another factor that supports the IEP team's determination that the Millet Learning Center would better meet the unique needs of Student.

Based on the evidence submitted, I find that the IEP team considered the unique needs of Student in making a placement determination. Based on Student's needs in academics, social skills, medical, physical therapy and occupational therapy, the MoCI placement at Millet Learning Center is far superior to permit Student to have a chance to meet challenging objectives as required by *Andrew F.* The MoCI classroom is the least restrictive environment best suited for Student's educational needs.

### **CONCLUSIONS OF LAW**

I find based on a preponderance of the evidence, that there were no procedural errors in the development of the December 2017 IEP.

I find based on a preponderance of the evidence, that the Petitioner has failed to establish that the District pre-determined Student's educational placement for the December 2017 IEP.


I find based on a preponderance of the evidence, that the Moderate Cognitively Impaired classroom at the Millet Learning Center determined as the educational placement for Student under the December 2017 IEP is the Least Restrictive Educational Environment that permits Student to receive a free appropriate public education that meets her unique circumstances.

### **ORDER**

#### **IT IS ORDERED:**

1. Petitioner's complaint is **DENIED**.
2. The Student shall attend the MoCI classroom at the Millet Learning Center as determined by the December 2017 IEP team.
3. Any claims or defenses not specifically addressed herein are dismissed with prejudice.

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

  
\_\_\_\_\_  
**Kandra Robbins**  
**Administrative Law Judge**



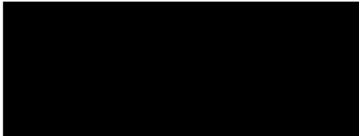
**PROOF OF SERVICE**

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 13<sup>th</sup> day of July, 2018.



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