

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

**IN THE MATTER OF:**

**Docket No.: 17-003463**

**V.H. o/b/o D.S.,  
Petitioner**

**Case No.: 17-00024**

**v**

**Agency: Education**

**Battle Creek Public Schools,  
Respondent**

**Case Type: ED Sp Ed Regular**

**Filing Type: Appeal**

---

**Issued and entered  
this 21<sup>st</sup> day of August, 2017  
by: Kandra Robbins  
Administrative Law Judge**

**DECISION AND ORDER**

**PROCEDURAL HISTORY**

This matter concerns a due process hearing request/complaint under the Individuals with Disabilities Education Act (IDEA) 20 USC 1400 *et seq.* On February 15, 2017, Petitioner filed a due process request/complaint with the Michigan Department of Education on behalf of her child (Student)<sup>1</sup>. It was forwarded to the Michigan Administrative Hearing System and assigned to Administrative Law Judge (ALJ) Kandra Robbins.

On February 24, 2017, Respondent filed an Objection to the Sufficiency of the Complaint. On February 27, 2017, an order granting the Objection to the Sufficiency was issued requiring Petitioner to file an amended complaint by March 10, 2017. On March 9, 2017, Petitioner filed an Amended Due Process Hearing Complaint. On March 20, 2017, Respondent filed a Response and Objection to the Amended Due Process Complaint. On March 23, 2017, an order denying the Objection to the Sufficiency of the complaint was issued. On April 4, 2017, a Prehearing Conference was held during which it was determined that four days would be necessary for the hearing. The hearing was scheduled to be held beginning on June 20, 2017 and continuing through June 23, 2017.

---

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

The hearing was convened on June 20, 2017 at the Battle Creek Public Schools administration offices in Battle Creek, Michigan. The Petitioner appeared on her own behalf. The Respondent was represented by Attorney Jennifer Starlin.

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

1. Joint Exhibit 1 is Review of Existing Evaluation Data (REED), dated March 12, 2015.
2. Joint Exhibit 2 is Multi-Disciplinary Evaluation Team (MET) Report, dated May 1, 2015.
3. Joint Exhibit 3 is MET Evaluation Team Recommendation, dated May 1, 2015.
4. Joint Exhibit 4 is an Individualized Education Program (IEP) Team Report, dated May 1, 2015.
5. Joint Exhibit 5 is an IEP Team Report, dated April 26, 2016.
6. Joint Exhibit 6 is an IEP Team Report, dated May 17, 2016.

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

1. Petitioner Exhibits 1 through 3 were not offered.
2. Petitioner Exhibit 4 is a sign-in sheet from Meeting dated April 26, 2016.
3. Petitioner Exhibit 5 was not offered.
4. Petitioner Exhibit 6 is emails.
5. Petitioner Exhibits 7 through 11 were not offered.
6. Petitioner Exhibit 12 is excerpts from the Michigan Administrative Rules for Special Education.
7. Petitioner Exhibits 13 through 17 were not offered.

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

1. Respondent Exhibit A is notes drafted by Tammy Robinson.
2. Respondent Exhibit B is an unsigned Letter of Agreement for Alternative Education Placement, dated October 13, 2014.
3. Respondent Exhibits C through F were not offered.
4. Respondent Exhibit G is a letter from M. Wells, dated October 28, 2014.
5. Respondent Exhibit H is a letter from M. Wells, dated July 13, 2015.
6. Respondent Exhibit I is a Petition for School Reinstatement, dated September 15, 2015.
7. Respondent Exhibit J is a letter from M. Cheeks, dated October 6, 2015.
8. Respondent Exhibits K and L were not offered.
9. Respondent Exhibit M is email chains.
10. Respondent Exhibit N is email chains.
11. Respondent Exhibit O is a note from T. Holwerda.
12. Respondent Exhibits P and Q were not offered.
13. Respondent Exhibit R is a sign-in sheet, dated May 17, 2016.
14. Respondent Exhibits S and T were not offered.
15. Respondent Exhibit Y is the teacher log for H. Bowers.
16. Respondent Exhibits Z through AA were not offered.

The following individuals testified in this matter:

1. Ann Walton, Supervisor of Compliance
2. Calvin Williams, Principal
3. Lisa Jasienski, Special Education Teacher Consultant

4. Matt Bonyngne, School Psychologist
5. Kermit Barry Linscott, Special Education Teacher Consultant
6. David Krajewski, School Social Worker
7. Tammy Kissinginger formerly Holwerda, Special Education Teacher
8. Monique Cheeks formerly Wells, Director of Pupil Accounting
9. Tammy Robinson, Special Education Supervisor
10. Hetty Colver, Assistant Superintendent for Special Education
11. V.H., Petitioner
12. Heather Bowers, Math Teacher
13. Kristi Rigelman, Transition Coordinator

At the conclusion of the hearing, Petitioner requested that the parties be permitted to file post-hearing briefs. A Scheduling Order was issued requiring post-hearing briefs to be filed by August 4, 2017. Respondent filed a post-hearing brief on that date. Petitioner chose not to file any brief. Respondent filed a reply brief on August 17, 2017.

#### **ISSUE**

1. Was the Petitioner denied the right to meaningfully participate in the development of the May 17, 2016 IEP because of procedural errors?
2. Did the April 29, 2016 IEP fail to provide a free appropriate public education for Student
3. Did the April 29, 2016 IEP fail to properly address Student's transition needs?
4. Should Student have received extended school year services?
5. Did the May 2015 IEP fail to provide an appropriate public education for Student?
6. Did Student receive a free appropriate public education from March 9, 2015 until the May 2015 IEP was developed and implemented?

#### **APPLICABLE LAW**

The petitioner-parents, as the party challenging the District's determination or implementation of special education and related services, have the burden of proof by a preponderance of the evidence for all claims raised in this matter. *Schaffer v Weast*,

546 US 49; 126 S Ct 528; 163 L Ed 2d 387 (2005); *Doe v Defendant I*, 898 F2d 1186 (CA 6, 1990).

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

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

Regarding procedural violations, Congress specifically provided in the 2004 amendments to the IDEA that to find a denial of FAPE based on procedural inadequacies, the procedural violation must have impeded the student's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or caused a deprivation of educational benefits. 20 USC 1415(f) (3) (E) (ii), see *Deal, supra*.

A district must ensure that the education program is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Student is entitled to have the chance to meet challenging objectives. The U.S. Supreme Court held that to provide FAPE, a district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988 (U.S. 2017).

Michigan Administrative Rules, R 340.1721e(3) states that in considering extended school year services, the individualized education program team shall do all of the following:

- (a) Determine if a student's current annual goals address 1 or more skills that need extended school year services. For any identified annual goal, the individualized education program team shall consider all of the following:
  - (i) Data that indicate that in the identified annual goal there is a potential for regression of skills beyond a reasonable period of recoupment.

- (ii) Data regarding the nature or severity of the disability of the student that indicates that there is a need to provide services in the identified annual goal during breaks in the school year.
- (iii) Information that indicates that in the identified annual goal the student is at a critical stage of learning or in a critical area of learning where failure to provide a service beyond the normal school year will severely limit the student's capacity to acquire essential skills.

### **FINDINGS OF FACT**

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

1. Student is 17 years old. He currently receives special education services as a student with a Specific Learning Disability R. 340.1713. [Jt. Exh. 6]
2. Student currently is considered a 9<sup>th</sup> grade student based on the credits he has accumulated. [Jt. Exh. 6]
3. Student has been attending the Battle Creek Public Schools. During the 2013/2014 school year, a child study process was initiated but not completed. [Jt. Exh. 1] At this time Student was in the middle school. [Tr. Vol. II, pg. 296].
4. Student began attending Central High School in September 2014. On September 22, 2014, Student was suspended. Student was suspended for 75 days. [Tr. Vol. II, pg. 298]
5. On March 12, 2015, a Review of Existing Evaluation Data (REED) was completed. At that time, Student was enrolled in the Battle Creek Central High School as a 9<sup>th</sup> grade student. [Jt. Exh. 1]. The REED was given to Petitioner in October 2014 but she did not sign the form authorizing the REED until March 2015. [Tr. Vol. II, pgs. 296-298]
6. On May 1, 2015, Matt Bonyng, School Psychologist and David Krajewski, School Social Worker completed their report concerning the assessments of Student. [Jt. Exh. 2].
7. A Kaufman Test of Educational Achievement-Second Edition (K-TEA-II) was administered. In the basic reading skills, Student had a standard score of 78

placing his word recognition skills within the "below average" range and at the 7<sup>th</sup> percentile of his same-age peers. Student lacks confidence in his basic reading skills. During the Reading Comprehension section, when reading aloud, Student's reading was consistently fluent at around 3<sup>rd</sup>-4<sup>th</sup> grade level text material. His decoding skills were much better when reading words in the context of a sentence. Student's basic reading skills were equivalent to 4<sup>th</sup> grade in comparison with his same-age peers. [Jt. Exh. 2]

8. On the reading comprehension portion, Student achieved a reading comprehension score of 75 placing his reading comprehension skills within the "lower extreme" to "below average" range at the 5<sup>th</sup> percentile. Student's reading comprehension skills were equivalent to 5<sup>th</sup> grade, 4 months. [Jt. Exh. 2]
9. On the written language portion of the KTEA-II, Student's ability was with the "below average" to "average" range. Student's basic writing skills were equivalent to a 3<sup>rd</sup> grade 2 months. [Jt. Exh. 2]
10. Student's spelling standard score is 78 placing his spelling skills within the "below average" to "average" range at the 7<sup>th</sup> percentile. Student's spelling skills were equivalent to 4<sup>th</sup> grade, 2 months. [Jt. Exh. 2]
11. Student attained a composite standard score of 78 in mathematical reason and mathematical computation. This is in the "below average" range. [Jt. Exh. 2]
12. On the listening comprehension portion, Student's ability was within the "average" range placing his skill set at the 32<sup>nd</sup> percentile. [Jt. Exh. 2]
13. The Multidisciplinary Evaluation Team (MET) recommended that Student be eligible for special education as a student with a learning disability. [Jt. Exh. 3]
14. A Student Transition Inventory Running Record (STIRR) was completed on April 28, 2015. The STIRR listed Student's post high school goals as to obtain his own home and work as a boxer or welder. [Jt. Exh. 4]
15. It is expected that Student will receive a regular high school diploma. [Jt. Exh. 4]
16. On May 1, 2015, an Individualized Education Program (IEP) Team met to develop an IEP for Student. The IEP team consisted of Kermit Linscott, Special Education Teacher Consultant; Matt Bonyng, School Psychologist, MET representative; David Krajewski, School Social Worker; Officer Young,

Police Liaison Officer; Bonnie Iden, Tutor; Amanda Ripley, General Education Teacher; Student; Petitioner; Harvey Crawley, Assistant Principal; Tammy Robinson, SPED Supervisor; and Lynne Paliwoda Assistant Superintendent of SPED. [Jt. Exh. 4]

17. At the time of the May 2015 IEP, Student was not attending school because of a disciplinary matter. Student was receiving 1:1 tutoring three hours a day for three days a week. [Jt. Exh. 4]
18. The May 2015 IEP has four academic goals. The goals are clear and detailed. They are measurable and are aligned with the grade level curriculum standards. [Jt. Exh. 4]
19. The first annual goal addresses Student's comprehension. It is that after having informational or narrative text read to Student, he will be able to answer comprehension and inference questions about the passage with 70% accuracy as measured on all curriculum based assessments for the duration of the IEP. Standard is that student will cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text. This goal is supported with four short term objectives. Each objective is measured during the marking period using Student's work. This goal allows for the modification of the curriculum by permitting the support of having the text read to Student. [Jt. Exh. 4]
20. The second annual goal concerns mathematics. The goal is that when given a function, Student will be able to identify what the function is and be able to solve and/or graph the equation by scoring 75% accuracy as measured by all curriculum based assessments for the duration of the IEP. This goal is supported by four short term objectives. [Jt. Exh. 4]
21. The third annual goal also concerns mathematics. The goal is that when given a triangle, Student will be able to correctly use the Pythagorean Theorem and other formulas to identify missing sides and angles of geometric shapes scoring 70% accuracy as measured by all curriculum based assessments for the duration of the IEP. [Jt. Exh. 4]
22. The fourth annual goal concerns written expression. It is that in order to produce clear and coherent writing, Student will develop a multiple paragraph piece focused on the topic at hand and use formal English with correct grammar and punctuation as measured by 70% on curriculum based assessment rubrics and analysis of written work in all classes and will be assessed over the duration of the IEP. The standard is to produce clear and



coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience. [Jt. Exh. 4]

23. The IEP called for the following supplementary aides/ services / personnel support for Student: Read test and assignments content and questions to Student; Extended time on tests; Alternative test area; Accommodated Assignments; Allow extra time in-class or outside class for work completion; special consideration for spelling and grammar on written assignments; use of calculator; break math problems down into smaller steps; Student may access audio and/or digital version of required readings and textbooks; and extended time on assignments. [Jt. Exh. 4]
24. The only Special Education Programs or Services called for in the IEP is 2 to 6 hours per week of Learning Disabled Teacher Consultant services. Student would be receiving his education in the general education classroom at Battle Creek Central High School. [Jt. Exh. 4]
25. On June 2, 2015, Student was placed in a Juvenile Home by the Court. He remained in this placement until July 2015. He did not attend school during this time. [Tr. Vol. II, pg. 300]
26. In September 2015, Student was set to attend Central High School again. By school policy a Reinstatement Form was required to be completed. Petitioner objected to the language on the Reinstatement Form. [Tr. Vol. II, pgs. 300-302]
27. Student returned to school in September 2015. Student was suspended for a period of time and returned to school in October or November 2015 after a second placement in a Juvenile Home. [Tr. Vol. II, pg. 303].
28. On April 29, 2016, an IEP Team meeting was held. The following individuals attended the IEP meeting: Student; Lisa Jasienski, teacher consultant; Matthew Schnaare, General Education Teacher; Lauren Cooper, MST Counselor; Tammy Kissinger, MET representative/case manager, Special Education Teacher; David Krajewski, School Social Worker; Andrew Classen, School Counselor. Petitioner did not attend the meeting. Petitioner had agreed to the date but at the last minute had a doctor's appointment. Petitioner contacted Lauren Cooper regarding her scheduling conflict. [Jt. Exh. 5 / Tr. Vol. II, pg. 304]
29. Student was again placed in a Juvenile home by the Court for approximately 2 weeks and did not attend school while in the Juvenile home. [Tr. Vol. II, pg. 306]

30. The April 2016 IEP noted that Student is a student who shows good intelligence and has demonstrated positive behaviors in school. He has shown the ability to be academically successful when he applies his abilities and makes use of numerous supports provided for him. [Jt. Exh. 5]
31. Student is still in the ninth grade for the 2016 IEP. [Jt. Exh. 5]
32. Student scored a 204 RIT score which placed him in the twentieth percentile in language usage. He scored a 200 RIT placing him in the eleventh percentile in reading. In mathematics, Student scored in the fifteenth percentile. [Jt. Exh. 5]
33. Based on the 2016 STIRR, Student's transition goals are to enter the Army or obtain a job straight after high school. [Jt. Exh. 5]
34. The April 2016 IEP contains four annual goals. The first goal is a mathematic goal. Student will be able to solve a simple system consisting of a linear equation and a quadratic equation in two variables algebraically and graphically at 80% as measured by his progress on curriculum based assessments in math class per marking period through the course of the IEP ending in April 2017. [Jt. Exh. 5]
35. The second goal is a writing goal. It is that Student will be able to produce clear and coherent writing in which the development organization, and style are appropriate to task, purpose, and audience. Seventy percent as measured by writing samples in English class or per marking period through the course of the IEP ending in April 2017. [Jt. Exh.5]
36. The third goal is the Student will be able to cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text, including determining where the text leaves matters uncertain at eighty percent as measured by his progress on curriculum based assessments in English class per marking period. [Jt. Exh. 5]
37. The fourth goal is that Student will accept academic support from staff or initiate requests to use the supports on a daily basis in order to prepare for his plans to move to a city in a different state and get a job directly after high school or join the army 6 out of 10 times over the period of the IEP. [Jt. Exh. 5]
38. The April 2016 IEP lists the following supplementary aids/ services or personnel support: Extended time on tests; Allow the Student to use the

cooling off area; Read test and assignment content and questions to Student; Alternative test area; reduce length and/or complexity of written assignments; and Allow extra time in-class or outside for work completion. [Jt. Exh. 5]

39. The April 2016 IEP provided for 20-60 minutes per month of School Social Worker consultation and 4.3-21.5 hours per week of Resource Program. [Jt. Exh. 5]

40. Tammy Kissinger was the case manager responsible for the actually writing of the April 2016 IEP. Ms. Kissinger checked the wrong box on the IEP form. She clicked the box for "Early Childhood" rather than "secondary resource". As a result, she was directed by Jamie Rogers to schedule and hold a new IEP meeting. [Tr. Vol. I, pgs. 195-196]

41. Ms. Kissinger testified that she spoke to Petitioner by telephone scheduling a new IEP meeting for May 17, 2016. The District had already scheduled a Reinstatement meeting with Petitioner for this date. Ms. Kissinger testified that Petitioner requested a School Social Worker attend the meeting. Ms. Kissinger testified that she requested School Social Worker David Krajewski attend the meeting. [Tr. Vol. I, pgs. 195-197]

42. On May 17, 2016, an IEP meeting was convened as part of a Reinstatement meeting. Student; Petitioner; Tammy Kissinger, Special Education Teacher; Matthew Schnaare, General Education Teacher; Lisa Jasienski, teacher consultant; and Calvin Williams, assistant principal attended the meeting. [Jt. Exh. 6]

43. The May 17, 2016 IEP contains exactly the same goals, services, and accommodations as the April 2016 IEP.

## DISCUSSION

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

*Was the Petitioner denied the right to meaningfully participate in the development of the May 17, 2016 IEP because of procedural errors?*

The May 17, 2016 IEP Team was convened because the Case Manager Ms. Kissinger incorrectly checked that the April 29, 2016 IEP was an early childhood IEP.

There is nothing in the record to indicate that Petitioner received proper notification that the meeting on May 17, 2016 was an IEP meeting. The Federal Regulations specifically state that the notice of an IEP meeting must include the purpose, time, and location of the meeting and who will be attending the meeting. It is clear from the testimony of Ms. Kissinger that Petitioner was not given this information.

Although Petitioner contends that she was not told that the May 17, 2016 meeting would be both a Reinstatement Meeting and an IEP meeting, Ms. Kissinger did speak to Petitioner as Petitioner requested that the school social worker attend the meeting. Ms. Kissinger did contact the school social worker however he did not attend the May 17, 2016 IEP meeting. The record clearly established that the only written notice regarding any meeting for May 17, 2016 was for a reenrollment meeting. [Resp. Exh. Q]

The Federal Regulations identify the various individuals that must be part of an IEP team. For the May 17, 2016 IEP, the Student and Petitioner were present. The team also included a special education teacher, Ms. Kissinger, and a general education teacher, Mr. Schnaare. The district representative was Calvin Williams, assistant principal. The regulations require that an individual who can interpret the instructional implications of evaluation results. In this case, Ms. Jasienski, a special education teacher consultant was the representative. The regulations also permit, at the request of a parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. Petitioner requested that the school social worker attend. Mr. Krajewski was part of the MET that conducted the evaluations of Student. In addition, it is clear from the record that social work services were discussed. Mr. Krajewski did not attend the May 17, 2017 IEP meeting. There is nothing in the record to indicate that Petitioner consented to the excusal of Mr. Krajewski after having requested his attendance.

The May 17, 2016 IEP did call for direct social work services for Student. Although the IEP does not appear to include any social work goals for Student. Based on the testimony, the goals included in the IEP were selected by the Case Manager using the common core standards. It is unclear from the record how much discussion or input the IEP team has regarding the goals. Ms. Robinson, the ISD Special Education director, testified that consultation would have occurred between the Special Education Teacher and the General Education teacher. [Tr. Vol. I, pgs. 77-78] Mr. Linscott testified that he "put together the IEP the way we have been instructed to do". [Tr. Vol. I, pg. 165] The goals in the IEP were based on the grade level achievements that a student would be required to show proficiency at. Ms. Kissinger did not testify as to how the goals in the May 17, 2016 IEP were developed.

I find that there were procedural errors in the development of the May 17, 2016 IEP. These procedural errors did affect Petitioner's ability to meaningfully participate in the IEP.

For the reasons stated below, I find that the May 2016 IEP lacking any reading goals failed to provide FAPE for Student.

*Did the April 29, 2016 IEP fail to provide a free appropriate public education for Student*

The District clearly developed goals in the April 29, 2016 IEP that were aligned with the state grade-level standards. From all accounts, when Student is in school he appears to work diligently and is successful. The goals are consistent with the general education state grade level standards. The goals are clearly designed for Student to learn the grade level content. From all accounts, when Student is in school and completes his work, he is able to meet the general education curriculum. The modifications and accommodations are clearly designed to address Student's unique reading needs to permit him to participate in the general education curriculum.

However, it appears that the District has abandoned its responsibility for the individualized decision-making process that is the hallmark of IDEA. Student clearly has a significant reading deficiency. Yet, there is not one goal designed to address Student's need in this area. The IEP clearly provides for modification or accommodation for Student to participate in the general education classes by having materials read to him. But, these accommodations do nothing to address Student's deficiency. Based on the testing, Student reads at a 3<sup>rd</sup> to 4<sup>th</sup> grade level. Student is eligible for special education services as a student with a Specific Learning Disability, including reading comprehension. The District has been aware of this deficiency since the initial evaluation in 2015. Yet, as of 2017, the District still has not provided any specific goals or services to address this need for Student. For example, there is no goal to address any grade level improvement in reading comprehension or reading fluency. While Mr. Linscott testified that the current goals would address his reading deficiency, he failed to explain how having the material read to Student improves Student's reading skills.

While the accommodations of having material read to Student allows him to participate in the general curriculum at grade level, it does nothing to prepare Student for life after high school. Reading is an essential skill. In the job market, it is unlikely that Student will have individuals assigned to read to him materials necessary to complete a job skill. Student's transitional plan, developed by the IEP team, calls for Student to become a barber or join the military, each would require reading. Yet, there is no goal or plan to improve Student's reading.

In a Dear Colleague Letter, 66 IDELR 227, OSEP has indicated that the cornerstone of IDEA is the entitlement of each eligible child with a disability to a free appropriate public education that emphasizes special education and related services designed to meet the child's unique needs and that prepare the child for further education, employment, and independent living 20 U.S.C. 1400(d)(1)(A).

In this case, Student's present level of academic performance is significantly below his enrolled grade. Student is 17 years old and enrolled in the 9<sup>th</sup> grade for about the third year. Yet, his reading ability is only in the 3<sup>rd</sup> to 4<sup>th</sup> grade. This District has implemented three IEPs for Student. However, not one single IEP has included any single goal to improve Student's reading comprehension or fluency to grade level. There has not been any specialized instruction to improve his reading skills.

When asked about this oversight, the testimony indicated that "reading is not part of the high school curriculum". This is not a justification for the District's failure to include any goals to attempt to bring Student's reading to grade level. Student is entitled to an educational program reasonably calculated to make progress appropriate in light of his circumstances. As the Respondent District points out, schools are to provide special education programs and services designed to meet the individual needs of each student with a disability. MCL 380.1751(a). The IEPs that have been developed for Student have failed to provide any education program to address Student's reading needs. The IEPs have only included accommodations. While these accommodations are helpful in the short-term, they are not realistic for the long-term goals for Student.

For these reasons, I find that the April 2016 IEP failed to provide FAPE to Student.

*Did the April 29, 2016 IEP fail to properly address Student's transition needs?*

The IEP does have a transition plan included. The transition plan was developed after Student completed the STIRR. The goal is for Student to graduate with a regular high school diploma. After high school, Student will go into the army or go into a job. However, as stated above, Student has a significant reading deficit. The District has made no attempt to improve Student's reading ability. Reading will clearly affect Student's ability to enter the military or obtain a job. It is unclear how the District plans to assist Student in meeting his post-secondary goals, when the District has failed to address Student's reading deficits. Therefore, I find that the IEP fails to properly address Student's transition needs.

*Should Student have received extended school year services?*

There has been no evidence submitted that Student requires extended school year services. There has been no evidence of regression. There was no evidence that failure to provide a service beyond the normal school year will severely limit the student's capacity to acquire essential skills.

*Did the May 2015 IEP fail to provide an appropriate public education for Student?*

The May 2015 IEP failed to provide any goals to address Student's significant reading deficit. For the reasons stated above, I find that the failure to include any goals to

address the present level needs of Student has resulted in the failure of the district to provide a free appropriate public education for Student.

*Did Student receive a free appropriate public education from March 9, 2015 until the May 2015 IEP was developed and implemented?*

Petitioner did not consent to the evaluation of Student for special education services until March 12, 2015. The evaluations were then begun and completed as part of the development of the May 2015 IEP.

I find that the District properly evaluated Student upon finally receiving Petitioner's consent. This resulted in the development of an IEP. Because there was no IEP in place until the initial IEP was developed in May 2015, I find that the District met all its obligations in regard to Student during this time frame.

Petitioner has failed to establish that Student did not receive an appropriate public education before the development of the IEP in May 2015.

### **CONCLUSIONS OF LAW**

1. Petitioner did establish, by a preponderance of the evidence, that she was denied the right to meaningfully participate in the development of the May 17, 2016 IEP because of procedural errors.
2. Petitioner did establish, by a preponderance of the evidence, that the April 29, 2016 IEP failed to provide a free appropriate public education for Student.
3. Petitioner did establish, by a preponderance of the evidence, that the April 29, 2016 IEP failed to properly address Student's transition needs.
4. Petitioner failed to establish, by a preponderance of the evidence, that Student should have received extended school year services.
5. Petitioner did establish, by a preponderance of the evidence, that the May 2015 IEP failed to provide an appropriate public education for Student.
6. Petitioner failed to establish, by a preponderance of the evidence, that Student did not receive a free appropriate public education from March 9, 2015 until the May 2015 IEP was developed and implemented.
7. The District is directed to provide 144 hours of specialized reading instruction as compensatory education to Student to address the failure of the District to

provide Student any reading instruction to alleviate his grade level deficiency in reading under the 2015 and 2016 IEPs. This is calculated at a rate of approximately 2 hours per week for the 2015/2016 and the 2016/2017 school years. This may be provided by District staff proficient with reading recovery for students with a specific learning disability in reading comprehension and fluency or contracted out to a private reading specialist as determined by the District. If the Student reaches his grade level in reading comprehension prior to the completion of the 144 hours, the District will have no need to provide the remaining hours.

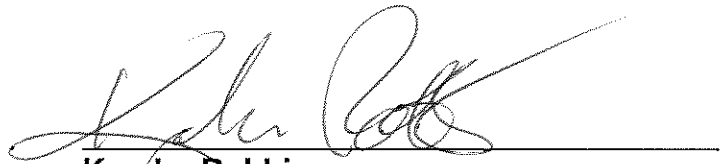
**ORDER**

**IT IS ORDERED** Petitioners' complaint is granted in part and denied in part.

**IT IS FURTHER ORDERED** that respondent provide proof of compliance with this decision and order to the Michigan Department of Education, in conformity with the form and content required by that agency, within 30 days of the date of this decision and order or upon completion of the required action whichever is later.

**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.

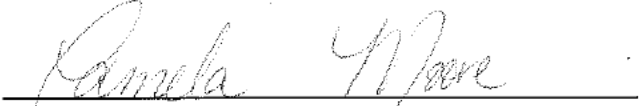
A handwritten signature in black ink, appearing to read 'Kandra Robbins', is written over a horizontal line. The signature is fluid and cursive.

**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 20<sup>th</sup> day of August, 2017.

  
\_\_\_\_\_  
Pamela Moore  
Michigan Administrative Hearing System

Battle Creek Public Schools  
Tammy Robinson, Special Education Director  
3 Van Buren St., W.  
Battle Creek, MI 49017

Jennifer K. Starlin  
Thrun Law Firm, P.C.  
PO Box 2575  
East Lansing, MI 48826

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

