

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

Docket No.: 17-019001

**J.D. o/b/o A.M.,
Petitioner**

Case No.: 17-00065

v

Agency: Education

**Romulus Community Schools,
Respondent**

Case Type: ED Sp Ed Regular

Filing Type: Appeal

**Issued and entered
this 6th day of December, 2017
by: Michael J. St. John
Administrative Law Judge**

DECISION AND ORDER

PROCEDURAL HISTORY

This matter concerns a due process hearing request/complaint under the Individuals with Disabilities Education Act (IDEA) 20 USC 1400 et seq. On or about September 1, 2017, Petitioner filed a due process request/complaint with the Michigan Department of Education (MDE). MDE forwarded the Due Process Hearing Request to the Michigan Administrative Hearing System for hearing. It was assigned to Administrative Law Judge (ALJ) Michael J. St. John.

The Due Process Hearing Request filed by Petitioner requested the following resolutions:

1. <A.M.¹> needs to continue to be placed at Cooke School in Northville indefinitely.

The hearing was held as scheduled on November 1 and 2, 2017. J.D., A.M.'s mother, appeared on behalf of Petitioner A.M. Attorney Gouri G. Sashital appeared on behalf of the Respondent.

At the conclusion of the hearing the record was closed.

¹ Initials are used in place of the names of minor children and their parents in order to protect their privacy.

ISSUE

As agreed to by the parties during the September 20, 2017 prehearing conference, the sole issue to be decided is as follows:

What should be the proper placement for the student for the 2017-2018 school year?

EXHIBITS

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

- 2. October 13, 2016 email
- 3. June 14, 2017 emails
- 5. Signs and Symptoms of Rejection
- 6. Signs and Symptoms of Infection
- 7. August 10, 2017 Letter from Dr. Kershaw
- 8. June 12, 2017 ER Visit Medical Record
- 9. October 7, 2017 Hospitalization List of Medications
- 10. October 3, 2017 Franklin SXI Class Communication Log
- 10a. October 3, 2017 Photo of A.M.
- 11. October 4, 2017 Franklin SXI Class Communication Log
- 11a. Photographs of A.M.'s medical equipment bag
- 12. October 16, 2017 Franklin SXI Class Communication Log
- 12a. October 16, 2017 Photo
- 15. October 12, 2017 Progress Report
- 16c. May 22, 2017 IEP Progress Report
- 21. August 9, 2017 email
- 22. August 11, 2017 email
- 25. August 22, 2017 email

- D. October 27, 2016 IEP
- F. February 10, 2017 FAPE Notice of Programs and Services
- M. May 22, 2017 IEP
- O. August 31, 2017 IEP
- P. August 31, 2017 FAPE Notice of Programs and Services
- R. August 17, 2017 Letter
- S. February 2017 Wayne RESA Plan for the Delivery of Special Education Programs and Services.
- T. January 17, 2017 Letter
- U. October 27, 2016 IEP Progress Report
- W. May 26, 2016 IEP

- X. May 25, 2016 FAPE Notice of Programs and Services
- Y. January 23, 2017 Letter

Exhibits 1, 4, 13, 14, 16a, 16b², 17-20, 23, 24, A-C, E, G-L, N, Q, and V were not offered.

APPLICABLE LAW

The petitioner-parent, as the party challenging the District's determination or implementation of special education and related services, has the burden of proof by a preponderance of the evidence for all claims raised in this matter. *Schaffer v Weast*, 546 US 49; 126 S Ct 528; 163 L Ed 2d 387 (2005); *Doe v Defendant I*, 898 F2d 1186 (CA 6, 1990).

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

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

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

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

The Federal Regulations defines "specially designed instruction" as follows:

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

- (i) To address the unique needs of the child that result from the child's disability; and

² There was no proposed Exhibit 16, only proposed Exhibits 16a, 16b, and 16c. Exhibits 16a and 16b were not offered but are duplicative of and therefore admitted independently as Exhibit R.

- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 CFR 300.39(b)(3)

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

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

In *Board of Education of Hendrick Hudson Central School District v Rowley*, 458 US 176, 102 S Ct 3034, 73 L Ed 2d 690 (1982), the U.S. Supreme Court articulated the two bases for assessing the provision of FAPE. The first was whether the school district had complied with the procedural requirements of the Act, and the second was whether the student's Individualized Educational Program (IEP) was "reasonably calculated" to enable the student to receive educational benefits. *Id.*, at 206-07.

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

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

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

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

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

The Code of Federal Regulations provides for determining educational placement as:

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

(a) The placement decision-

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118 ;

(b) The child's placement-

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

- (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
- (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.
34 CFR §300.116

FINDINGS OF FACT

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

1. A.M. is a 15 year old severely multiple impaired (SXI) special education student with Wolf-Hirshorn Syndrome, a genetic chromosome deficiency. A.M. has the cognitive age equivalency of an 8 month old and requires total care. She is non-ambulatory, requiring a wheelchair.
2. For the beginning of the 2016-2017 school year, A.M. was placed in the Severely Cognitively Impaired (SCI) Classroom with teacher Dr. Mullinix at Franklin Elementary School in the Wayne-Westland District.
3. The Respondent School District does not have either an SCI or an SXI classroom, and so they send their students to Franklin Elementary in the Wayne-Westland School District through an agreement with Wayne Regional Educational Service Agency (Wayne RESA). All SCI and SXI students in the Respondent district attend SCI or SXI classrooms at Franklin in Wayne-Westland unless Romulus files for and Wayne RESA accepts a cross-county deviation.
4. A.M. had a kidney transplant at the end of 2016. Following the transplant, there were concerns about rejection and the Petitioner and Respondent jointly agreed to apply for a cross-regional waiver from Wayne RESA so that A.M. could attend Cooke Elementary School in Northville Public Schools. The reason for the waiver was that Cooke has more nurses on staff than Franklin, including a nurse who was familiar with the signs and symptoms of kidney rejection. The risks for rejection of a kidney are the greatest following the transplant surgery, and lessen over time up through a year following the transplant. A year after the transplant the risks for rejection are as low as they will ever be – the risk of rejection is always present.
5. The cross-regional deviation that was granted on January 23, 2017 (Exhibit Y)

noted that the deviation was granted through the end of the 2016-2017 school year (which for A.M. is extended and ended in August of 2017) and was to be reevaluated at the end of the year.

6. In May of 2017, an IEP was held at Cooke School which again showed A.M. to have Severe Multiple Impairment and continued A.M.'s placement in the SCI classroom at Cooke.
7. On August 31, 2017, another IEP was held which again classified A.M. as severely multiply impaired and assigned her to an SXI classroom. At the August 31, 2017 IEP, Respondent refused to apply for a cross-regional waiver to request that A.M. be placed at Cooke. Respondent believes that Franklin's SXI classroom is an appropriate placement and the medical needs following A.M.'s transplant have lessened with the passage of time
8. All parties agree that A.M. is severely multiply impaired and that an SXI classroom (or a SCI classroom) is an appropriate placement for A.M. The parties disagree whether Franklin (instead of Cooke) is an appropriate placement for A.M. with the Petitioner believing that Franklin is not an appropriate placement and the Respondent believing that Franklin is an appropriate placement.
9. Franklin is primarily a general education middle school and students in the SXI and SCI classrooms interact with the general education students. Franklin has one SXI classroom and one SCI classroom that both provide one teacher, two paraprofessionals, and a shared nurse between the two classrooms. SXI and SCI students take one hour of physical education each day in a gym specifically adapted for their needs. SXI and SCI students attend assemblies in the cafeteria but not in the gymnasium. There is no special education PTA or special education activities at Franklin.
10. Cooke is a center based program with only special education students attending. Cooke has nine total SXI and SCI classrooms that each provide one teacher and two paraprofessionals; Cooke has four shared nurses for all of the school. Cooke has a shaded outdoor recreation area/playground adapted for students in wheelchairs that A.M. was able to utilize. SXI and SCI students attend all school assemblies. There is a special education PTA and special education activities at Cooke. A.M. was a cheerleader at Cooke.

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

J.D., Petitioner

11. A.M. has a genetic chromosome deficiency, called Wolf-Hirshorn Syndrome. J.D. described A.M. as very social but requiring total care. A.M. has received a kidney from her biological father which is life-prolonging. J.D. described A.M.'s education as especially important to her life. A.M.'s life expectancy with the new

kidney is approximately 15 more years. She has the cognitive age equivalency of an 8 month old.

12. A.M.'s medical needs have not improved. She needs immunosuppressant medications which prevents her exposure to sunlight and has her immune system suppressed. She needs to have her diaper changed frequently (every 2.5 to 3.0 hours) depending on her liquid intake. She also needs frequent hydration of both water and formula via tube feeding.
13. A.M. is eligible for special education services based on severe multiple impairments. She requires accommodations of daily living, nursing and vision services, speech, physical, and speech therapies.
14. A.M. is working on independent sitting, standing in the stander, and wearing her AFOs for longer periods of time. A.M. is also working on being attentive to a story and hitting a switch.
15. A.M. has been placed at Franklin School for her middle school program except from February of 2017 through August of 2017 (for the summer program).
16. A.M. had a kidney transplant on December 21, 2016.
17. Communication has been a large concern for J.D. at Franklin School and particularly the fact that there is no communication log provided by Franklin's teachers.
18. J.D. was communicating with Dr. Mullinix, her teacher, about her communication concerns.
19. During this time, A.M.'s health was decreasing as she was becoming ready for her kidney transplant.
20. J.D. and her husband were told that they could not come into the Franklin classroom unannounced – they needed to request permission.
21. J.D. believes that the Franklin program is inappropriate because of the lack of complete communication.
22. J.D. believes that there is a difference between separate facility programs and classrooms within general education schools.
23. Franklin has a nurse who accomplishes what is needed for A.M.'s medical care but often there are substitute nurses. The substitute nurses have not properly managed A.M.'s feeding tube and pump. There was also an incident in 2014 where A.M. was not fed; this has been resolved.
24. J.D. has had few communications with A.M.'s current teacher, Mrs. Wolf.
25. J.D. is concerned about the diaper changing. There have been two instances where A.M.'s clothes were sent home soiled and there was no communication about why and how this had happened.

26. J.D. believes that A.M. needs one-on-one medical care (either a nurse or an aide) but this has not been done at Franklin.
27. A.M. has interactions with general education students at Franklin (approximately 900 students total) when she is pushed through the hallways by volunteer general education students.
28. A.M. is not included in assemblies or functions with the school at Franklin whereas she does get to participate in those at Cooke.
29. Franklin does not have any during or after school activities or sports whereas at Cooke she was able to be a cheerleader. There is an after school program for A.M. but it requires parent participation.
30. Franklin does not have outside activities for A.M. while Cooke has outside activities such as wheelchair swings and other outside areas that are shaded.
31. The doors at Franklin are not handicap accessible (with the button to automatically open the doors).
32. J.D. believes that A.M. belongs in a separate facility program – she has been in such a program throughout elementary school education years (in both another county and in Wayne County).
33. J.D. saw improvement in A.M. when she was at Cooke – she was “more worn out” and ready to go to bed about an hour earlier. J.D. saw A.M. get excited when meeting staff and students at Cooke. She was also able to participate in a bowling event at Cooke which was exciting for her.
34. Prior to the transplant, A.M. was easily fatigued and was deteriorating. A.M. has been doing much better since the transplant although she still can be fatigued particularly on school days likely due to the activities that she participates in.
35. J.D. expressed her communication (or lack thereof) concerns with Dr. Mullinix as well as her nursing concerns during the October 2016 IEP meeting.
36. A.M. had the opportunity to go on field trips at Franklin while in Dr. Mullinix’s classroom. J.D. is unaware of field trips for the 2017-2018 school year.
37. A.M. has physical education (gym) with her classmates at Franklin one hour per day at Franklin.
38. At the August 31, 2017 IEP meeting, A.M. was placed in an SXI classroom at Franklin instead of the SXI classroom at Cooke where she had been from February through August of 2017.
39. J.D. agrees with each of the findings in the August 17, 2017 assessment (Exhibit R).
40. J.D. agrees that A.M. has been placed in an SXI classroom at Franklin (not with Dr. Mullinix) which was the placement recommended in the August 17, 2017

letter.

41. The August 31, 2017 IEP (Exhibit O) is consistent with A.M.'s needs as stated in the August 17, 2017 letter (Exhibit R).
42. The August 31, 2017 IEP provided services consistent with her prior IEPs with additional nursing services added.
43. J.D. agrees that a setting with only special education students is more restrictive than a school that has both special and general education students.
44. A.M.'s clothes have come home soiled twice in the five weeks she has been at Franklin this school year. This had also happened once at Cooke and rarely outside of school.

Matthew Butler, M.S.W., Nephrology Social Worker, University of Michigan

45. Mr. Butler has a M.S.W. and is licensed as a social worker in Michigan. He is the pediatric nephrology social worker at the University of Michigan.
46. Mr. Butler agrees that understanding and responding to the signs and symptoms of rejection and infection is important for A.M.'s educators.
47. Mr. Butler believes it is extremely important to have A.M.'s diaper changed as quickly as possible after it is soiled.
48. There is always a risk of infection when there is a kidney transplant.
49. A.M. will likely outlive her kidney transplant, which is likely to last for about 10 years.
50. Having a nurse with pediatric kidney transplant experience would be beneficial for A.M.'s care.
51. A.M.'s care remains medically complex following her transplant.
52. Mr. Butler is unaware of the level of care that A.M. has received or is receiving at either Cooke or Franklin.

Donise Floyd, Ph.D., Director of Special Services for Respondent

53. Dr. Floyd has been the Director for the last year; she previously worked for Detroit Public Schools as an Assistant Principal over a special education program, an administrator, and a teacher. In her current capacity she oversees the special education program including making decisions on placement for all special education students. Dr. Floyd's doctorate is in special education administration.
54. Dr. Floyd is familiar with the Respondent district's special education services which include resources in every building and cross categorical classrooms as

well as a transition program at the high school. These include students up to those with moderate impairments.

55. For students with severe impairments the Respondent sends the students to other programs in Wayne Regional Educational Service Agency (Wayne RESA) as part of a cooperative agreement.
56. Center programs are where all of the services are provided to the student in the building.
57. Romulus has 82 students that are sent to severe impairment programs.
58. The Director of Special Education in the district where the school is located administers the program.
59. There are six SXI classrooms throughout Wayne County, but only one where students from the Respondent district are sent without receiving permission from Wayne RESA.
60. The IEP team looks at whether the Respondent can meet the student's needs, and if they cannot, they contact another district to see if they have space and capabilities to meet the student's needs.
61. Wayne-Westland's SXI classroom is the receiving district classroom for the Respondent's students that need an SXI placement (Exhibit S).
62. The Respondent may not send a student to an SXI program, other than Wayne-Westland, without seeking approval from Wayne RESA; this is called a cross-county deviation.
63. Cross-county deviations are only permitted for extenuating circumstances.
64. Dr. Floyd does not believe that there is any difference in the services provided in center programs regardless of whether it is housed in a building with or without general education students.
65. A.M. is severely multiply impaired, SXI, requiring multiple special education services. She is not able to understand or work on a general education curriculum.
66. An SXI classroom provides everything that a student needs.
67. Pursuant to the May 2016 IEP, A.M. was placed in an SXI classroom.
68. Pursuant to the May 2016 IEP, A.M. was placed in the Wayne-Westland SXI classroom at Franklin Middle School.
69. Dr. Floyd submitted a cross-deviation request to Wayne RESA following the October 2016 IEP meeting. J.D. requested the deviation because of communication issues and an upcoming transplant A.M. was to receive.
70. J.D. did not raise concerns about nursing care or programming during the October 2016 IEP.

71. The extenuating circumstance for the prior deviation request was the upcoming kidney transplant. Dr. Floyd, however, believed that A.M. was receiving FAPE at Franklin.
72. Dr. Floyd believes that the nurse at Franklin is trained to administer A.M.'s medications.
73. Dr. Floyd believes that the Cooke and Franklin programs are equivalent and synonymous.
74. Dr. Floyd told J.D. that placement at Cooke was approved for the 2016-2017 school year and that placement would be reevaluated for the 2017-2018 school year.
75. On May 22, 2017, A.M. had another IEP conducted by Northville Public Schools where she was attending school at that time. She qualified under the severe multiple impairment classification.
76. At the August 2017 IEP the team determined that A.M. would be placed in an SXI classroom at Franklin, in Wayne-Westland.
77. At the August 2017 IEP meeting the determination was made to put A.M. in the SXI classroom rather than the SCI classroom that Dr. Mullinix was teaching at Franklin.
78. The IEP team considered A.M.'s current needs, as outlined in the August 17, 2017 letter (Exhibit R), in setting her placement in the SXI classroom at Wayne-Westland at Franklin.
79. The IEP team considered the parent's request to place the child at Cooke, but the IEP did not select this option because the Respondent district believes that they can provide FAPE at the school that is closer to the family (Exhibit P).
80. The IEP team did not consider a second request for a deviation (for placement at Cooke) because the IEP team believed that FAPE could be provided at Franklin.
81. The IEP team felt that placement of A.M. in a classroom contained in a general education building was less restrictive than placement at Cooke which is only special education students.
82. The IEP team considered the parent's request for increased nursing services but was awaiting doctor's orders to clarify medical needs (Exhibit P).
83. A.M. did not return to school until September 21, 2017 because of the parent's decision to keep her out of school during that time period.
84. Dr. Floyd believes that the Wayne-Westland Franklin School placement provides FAPE because it provides all of the services that A.M. needs.
85. Dr. Floyd agrees that A.M. was receiving FAPE at Cooke.
86. At the August 31, 2017 IEP meeting, after the SXI classroom was decided to be

the correct placement for A.M., Franklin was determined to be the assigned placement from Wayne RESA. There was a discussion about whether there was any reason to apply for a cross-regional deviation, and the decision was made that there was no reason to apply.

87. There are three other transplant students in the Respondent district – only A.M. is at Franklin.

88. The Respondent district does not receive money for A.M.'s education regardless of whether she is placed in Northville or Wayne-Westland. The Respondent does provide transportation to students throughout the region. There is a transportation budget and the Respondent does not consider it an increased cost sending a student (here A.M.) to a school that other Respondent students do not attend.

Molly Garcia, current Director of Special Education for Saline Area Schools and former Director of Special Services for Respondent

89. Ms. Garcia was previously the Director of Special Education Services for the Respondent. She worked for the Respondent for 15 years total as a teacher and then the last 2.5 years as the Director. She has bachelor's and master's degrees in special education and has a professional teaching certificate.

90. Ms. Garcia remembers the challenges that J.D. was experiencing with Franklin's communications about A.M.'s day-to-day activities.

91. Ms. Garcia was concerned with how services were implemented at Wayne Westland and also with the lack of administrative support there (not having a contact person for the parent to speak with).

92. Ms. Garcia described the cross deviation request process and noted that it was mandatory to file a request with Wayne RESA in order to place a child in another location. The cross deviation process does not impact the Respondent's funding.

93. Ms. Garcia is unsure whether the parents' concerns with their child's education at Franklin are still ongoing.

94. Ms. Garcia indicated that the Franklin and Cooke programs are designed to be equitable.

95. When Ms. Garcia was the Special Education Services Director, Wayne Westland had challenges with the implementation and staffing of the program. The Franklin program was also unable to describe or provide documentation as to how often services were being provided. There was a plan to fix these issues, but it was not as consistent as was expected.

96. Ms. Garcia believes that the Franklin placement was providing FAPE to A.M.

Dyanne Hildebrant, Director of Special Education Secondary Level Services for Wayne-Westland School District

97. Ms. Hildebrant is in her 10th year in her current position which includes overseeing the SXI classroom at Franklin. She has both bachelor's and master's degrees in special education and administration respectively. She is also a licensed EI special education teacher.
98. Wayne County RESA funds the center programs including the SXI classroom at Franklin. These classrooms are comprised of students both within the district and surrounding districts (including the Respondent district).
99. Ms. Hildebrant has requested a cross-regional deviation from Wayne RESA for her students. This is required to send a student to a placement outside of the catchment area.
100. The Franklin SXI classroom covers students from ages 3 through 26. These students usually have health needs coupled with physical and cognitive deficits. The students are primarily severely impaired and usually are unable to do tasks independently and therefore require considerable staff assistance.
101. The SXI classroom has a teacher and two paraprofessionals as well as up to nine students. Therapies and nursing support is also available for the classroom.
102. The classroom is designed to meet the students' needs. Staff are trained to assist students with their activities of daily living.
103. There is at least one nurse available in each SXI building. The nurse is assigned to Franklin to cover both the SCI and the SXI classrooms. There are eight students in the SXI classroom and twelve students in the SCI classroom. The nurse spends about 90% of her time in the SXI classroom. The nurse does not provide services to the general education students.
104. The nurse is trained in providing food, water, and medications through a feeding tube.
105. The SXI students at Franklin have an opportunity for adaptive physical education which they receive daily.
106. The SXI students at Franklin go out into the community on field trips where they can interact with outside environments on skills that the students are working on.
107. There are 900 students at Franklin, about 17% with IEPs (including SXI and SCI students).
108. Students in the SXI classroom interact with the general education students through general education student volunteers. Ms. Hildebrant believes that this is beneficial to the SXI students and allows them peers to interact with.

109. Staff communicate with parents through telephone, text, email, and daily communication sheets.
110. Ms. Hildebrant believes that the other Wayne County SXI programs offer similar services and programs to the Franklin program.
111. Ms. Hildebrant was on the August 31, 2017 IEP team that established the SXI classification and classroom for A.M.
112. Ms. Hildebrant believes that the Franklin SXI program placement is appropriate for A.M.
113. The October 2016 IEP focused on A.M.'s upcoming kidney transplant and her medical needs following that transplant.
114. Ms. Hildebrant addressed J.D.'s communication concerns with the school's principal and the classroom teacher.
115. A.M.'s classification did not change for 2017-2018 from the prior year – only the location of that classroom.
116. To Ms. Hildebrandt's knowledge, A.M. has been receiving the services required by her August 31, 2017 IEP (Exhibit O).
117. Ms. Hildebrant believes that the SXI classroom at Franklin can provide for A.M.'s needs.
118. Although possible to have a cross-deviation for longer than a year, it is unusual.
119. Sports and activities are not offered for SXI students at Franklin because there are not enough students/parents able/willing to participate in those programs.
120. Ms. Hildebrant has spoken with Ms. Williamson about J.D.'s desire for increased communication and the correct contact number.
121. Ms. Hildebrant agrees that Cooke's program is similar, but not exactly the same as Franklin's program.
122. The Nurse at Franklin performs catheterizations on other students.
123. There is a student who has a one-to-one nurse in the SXI classroom at Franklin. This is available to students who have that need.
124. The nurse at Franklin missed about 20 school days last year.
125. There is no separate activity or light room at Franklin.
126. On October 3, 2017, and October 16, 2017, A.M. had soiled clothes attached to her wheelchair when she returned from school (Exhibits 10a and 12a) but this was not contained on the daily communication log (Exhibits 10 and 12).
127. Ms. Hildebrant noted that the progress notes from Franklin (Exhibit 15) is different than the IEP progress notes from Cooke (Exhibit 16c). These progress notes are similar to the one in Exhibit U.

128. Until a second paraprofessional was recently hired, there were days when there was only one paraprofessional in the room.
129. The regularly assigned SXI teacher is currently out on medical leave – the class is currently staffed by a long term substitute.
130. Staff at Franklin have not been trained on the signs and symptoms of organ infection and rejection.
131. Ms. Hildebrant has not received any information that would lead her to believe that A.M. needs a one-to-one nurse.

Sharon Nelson, Bus Aide

132. Ms. Nelson is an Aide for the bus company that services the Respondent school district.
133. She is not a part of A.M.'s IEP team and does not have any say in her educational placement.
134. A.M. is a good student on the bus – she was the only student on the bus for the summer program from Romulus to Northville.
135. The bus run from Romulus to Cooke School in Northville was not available for her (or any other bus driver) to bid on this semester.

Michelle Pasley, Bus Driver

136. Ms. Pasley has been a bus driver for 18 years. She has transported students to Cooke School last year including A.M. and two other students last year – those two students graduated.
137. Ms. Pasley is not a part of A.M.'s IEP team and does not have any say in her educational placement.

Jennifer Bugar, Supervisor/Principal of Cooke School

138. As the Principal of Cooke School she supervises the center program. She has been with Northville for six years, one year as an Assistant Principal and five as a Principal. She has bachelor's, master's, and educational specialist degrees. She is a licensed teacher with special education endorsements.
139. A center program is the most restrictive setting because there is no involvement with general education students.
140. There are two other SXI classrooms in general education buildings within the Northville School District.
141. Cooke School takes students from nine Wayne County districts (but not

Romulus); Wayne RESA decides the catchment areas.

142. Cross-county deviations are done when there is not a program that is able to meet the students' needs within the catchment area. Wayne RESA makes this decision whether to accept or reject these requests.
143. Northville sends students outside of the district, but she has not been involved in those cross-regional deviations.
144. Cooke has 11 SXI classrooms.
145. Cooke has 198 students at the school and 22 students at the satellite locations. About 2/3 of the students require nursing assistance.
146. Cooke has three full time RNs and three paraprofessional LPNs serving as one-on-one aides.
147. The SXI classrooms are staffed at 1 staff to 3 students (unless there is a one-on-one aide) with a teacher and two paraprofessionals in a classroom with up to nine students.
148. SXI classrooms are geared toward implementing the SXI students' IEP curriculum, therapies, and needs. The curriculum is modified to the cognitive levels of the students.
149. Ms. Bugar has not visited Wayne-Westland's SXI program but understands that the SXI classrooms offer similar services in each district.
150. A.M. was a student at Cooke with a cross-county deviation. A.M. was placed in one of the SXI classrooms.
151. A.M. has multiple needs across different areas and Ms. Bugar agrees that A.M. needs to be in an SXI classroom.
152. When A.M. came to Cooke, she had additional medical needs in the form of nursing staff available to recognize and respond to transplant rejection signs and symptoms. A.M. did not need one-on-one nursing. There was a one-on-one nurse in A.M.'s classroom for one of A.M.'s classmates although she would not have provided care to A.M. absent an emergency situation.
153. The school year ends in June but the SXI classroom ran through August 17, 2017.
154. The staff at Cooke met and modified the IEP, adding new goals. Northville also performed a new IEP as a result of the three year evaluation.
155. Ms. Bugar compiled the August 17, 2017 letter regarding A.M.'s (then-) current condition (Exhibit R). Ms. Bugar believes that "all of <A.M.>'s needs are appropriately met in an SXI classroom."
156. Ms. Bugar believes that the August 2017 IEP is appropriate to address A.M.'s needs. The goals for A.M. have not changed between May of 2017 and August

of 2017.

157. Northville does not participate in schools of choice. Students from districts outside the catchment area can only participate in Cooke's program through a cross-regional waiver.
158. Ms. Carmack is an SXI certified teacher. She is currently on maternity leave but her class has seven students in it (of nine available slots).
159. One of the RNs on staff at Cooke has emergency room experience.
160. Cooke has a sensory (sometimes called a sensory light) room.
161. At Cooke, there is an adaptive physical education gym and an occupational therapy area as well as an adapted (and shaded) outdoor playground.
162. Cooke currently has only one cross-county deviation student.
163. Now that A.M. has left Cooke, there are no current students who have had a transplant.
164. Cooke typically has three to five substitute nurse days per month amongst the six nurses on staff.
165. There is currently room for A.M. at Cooke.
166. Students are placed at the satellite campuses based on their needs – these students do not have medical needs for full time nursing staff or other behavioral or cognitive deficits.
167. A.M. would not have been a candidate for one of the satellite campuses because of her medical needs, but now would be appropriate for one of those placements, although this decision also requires input from the nursing staff.
168. The services provided at the satellite campuses are the same although there are some different opportunities at each campus.

Marjie McAnally, Superintendent for Respondent

169. Ms. McAnally met with J.D. in July of 2017. J.D. expressed concern about the Respondent's communication with J.D.
170. Dr. Floyd told Ms. McAnally that IEPs were occurring. Ms. McAnally was invited to the IEPs but her schedule did not permit her attendance. As Superintendent, she does not regularly attend IEPs.

Erik Mullinix, Ed.D., SCI Teacher at Franklin

171. Dr. Mullinix is a special education teacher at Franklin with a certification in cognitive impairment. A.M. was in Dr. Mullinix's SCI classroom for two years.

172. Dr. Mullinix knows that there were school assemblies in the Franklin cafeteria that A.M. attended with the paraprofessionals, but Dr. Mullinix did not recall whether A.M. attended any assemblies in the gymnasium.
173. There was a parental concern about a feeding issue in 2014. The nurse instituted a feeding log to ensure that this never happened again which was successful.
174. There was a broken food pump – he is unaware of how this occurred.
175. At Franklin, students go outside when the weather permits. There is no shaded area and no adaptive playground equipment. There is no sensory or OT/PT room.
176. Dr. Mullinix's classroom is not air conditioned – the SXI classroom is.
177. Dr. Mullinix attended A.M.'s August 2017 IEP because the SXI teacher was not available (because she is on long term leave).
178. The August 2017 IEP decided on A.M. being placed in an SXI classroom.
179. Dr. Mullinix is the SCI classroom teacher – he does not spend time in the SXI classroom.
180. Dr. Mullinix noted that the high school SCI classroom might be problematic for A.M. because more of the students are ambulatory.
181. There is no playground equipment at all at Franklin because it is primarily a general education middle school.
182. At Franklin, SXI students have access to adaptive physical education. Franklin has a special education gym which has adaptive equipment that the students can use. SXI students have gym class every day.
183. Dr. Mullinix believes that the SXI classroom provides A.M. FAPE and is a better environment for A.M. than the SCI classroom placement.
184. Dr. Mullinix believes that A.M.'s medical needs are being met and that she is receiving FAPE.
185. Dr. Mullinix does not remember the last time the RN was absent – she has not been absent this (2017-2018) school year.

CONCLUSIONS OF LAW

The Petitioner has not established, by a preponderance of the evidence, that A.M.'s current placement, at Franklin School in Wayne-Westland, is not providing A.M. with a free appropriate public education. It is not in dispute that all of the procedural safeguards have been met – A.M. had the required IEPs and all parties agreed that A.M. needs to be in an SXI (or SCI) classroom for the 2017-2018 school year. The only question remaining is whether the SXI classroom at Franklin is "reasonably calculated

to enable a child to make progress appropriate in light of the child's circumstances" as required by *Endrew F.* It is.

The evidence clearly shows that the two SXI classrooms at the two locations in the two school districts are different. Cooke provides a PTA, after school activities, full assembly attendance, a sensory room, and shaded wheelchair swings; Franklin does not provide these services. Franklin provides special education students the opportunity to interact with general education students while Cooke does not. Both programs provide appropriate staffing levels for teachers, aides, and nurses. Franklin provides one nurse for up to 18 SXI and SCI students whereas Cooke provides four nurses for up to 81 SCI and SCI students plus the remaining special education population of the school.

The Petitioner has established why she believes that Cooke is a better setting for A.M., but this is ultimately a subjective opinion. Even if her opinion is adopted that Cooke is a better program for A.M., this is not the standard by which the programs are to be judged. The standard is whether the placement at Franklin is enabling the student to receive a meaningful educational benefit in relation to the student's potential and therefore providing A.M. with FAPE. Both programs are providing all of the required services to meet the agreed-upon goals and services in A.M.'s IEP.

The noted issues with communication and staffing at Franklin do not establish a denial of FAPE for A.M. All of A.M.'s IEP is being fully implemented at Franklin.

There was some evidence presented at the hearing that A.M. requires one-to-one nursing support, particularly A.M.'s physician's letter (Exhibit 7). However, this was not contemplated in A.M.'s IEP at either Cooke or Franklin (Exhibits M and O respectively), is not thought to be necessary by the Cooke school principal, Ms. Bugar (Finding of Fact #153) and was not challenged by the Petitioner either at the initial IEPs or in her request for his hearing. Further, one-on-one nursing, if it does become necessary, is available at Franklin (Finding of Fact #124) and would not be a basis for A.M. needing to attend Cooke. Similarly, any training necessary to recognize the signs and symptoms of transplant rejection (Exhibits 5 and 6) could certainly be obtained by the nurse(s) at Franklin and would not be a basis for A.M. needing to attend Cooke. A.M.'s placement for the second half of the 2016-2017 school year was a temporary one to deal with the immediate medical concerns following her kidney transplant.

Petitioner J.D. is an exceptional parent and advocate for her daughter. She is trying her absolute best to do what is right for her daughter. This is admirable. She earnestly and honestly believes that Cooke is a better environment for both herself as the parent and for her daughter's educational needs. Indeed, it very well may be. The evidence presented at the hearing shows that Cooke is an excellent school with many great programs, services, and staff members. The evidence presented at the hearing

focused primarily on the shortcomings of Franklin but did establish that the Franklin program is fully meeting A.M.'s needs and fully implementing her IEP even without many of the same opportunities that Cooke provides.

Because of the nature of the hearing, there was little evidence presented on the positive aspects of the SXI and SCI classrooms at Franklin. This is not to say that the program at Franklin is subpar – there was no such evidence submitted. Although communication could be improved, the evidence submitted indicated that these issues were isolated and easily corrected. There was evidence presented to show that A.M. and her peers are able to participate in one hour of gym activities each day in a gym with all of the required and appropriate equipment. Further, Dr. Mullinix, A.M.'s previous teacher, believes that A.M. is getting FAPE at Franklin (Finding of Fact #185). His testimony that A.M. is receiving FAPE at Franklin is credible and supported by the evidence presented at the hearing and is shared by Dr. Floyd, Ms. Garcia, and Ms. Hildebrandt (Findings of Fact #74, #87, and #108 respectively).

The issue to be decided, and the standard to be followed is not what constitutes the best placement for A.M., but rather whether her current placement is fully implementing her IEP, which it is. It is truly unfortunate that the parents are unhappy with their child's placement and believe that there is a better placement that they cannot access. The evidence here, though, shows that A.M. is receiving a free and public education at her current placement at Franklin in Wayne-Westland. This is what the law requires.

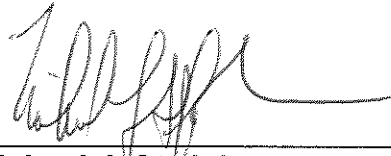
The Petitioner is encouraged to continue to advocate for her daughter and her needs and in particular to ensure that all of her daughter's needs are being fully met at her placement in the SXI classroom at Franklin in Wayne-Westland. Based on the evidence presented at the hearing, the staff at Franklin truly wants what is best for A.M. and desires to fully and completely implement A.M.'s IEP as best they can. All of the parties are encouraged to continue to communicate their needs and desires with each other in order to best serve the Petitioners and to educate A.M. The undersigned Administrative Law Judge wishes all of the parties well in this important, and indeed essential, endeavor.

ORDER

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

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

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

A handwritten signature in black ink, appearing to read "Michael J. St. John", written over a horizontal line.

Michael J. St. John
Administrative Law Judge