

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

**L.C. & R.C. o/b/o L.C.,
Petitioner**

v

**Livonia Public School District,
Respondent**

Docket No.: 18-005579

Case No.: 18-00032

Agency: Education

Case Type: ED Sp Ed Regular

Filing Type: Appeal

**Issued and entered
this 17th day of August 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 March 28, 2018, Petitioner filed a Due Process Hearing Request. Michigan Department of Education (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 30, 2018, a Scheduling Order was issued scheduling a Prehearing Conference for April 19, 2018. On April 6, 2018, Respondent filed an Answer to the Due Process Complaint. On April 19, 2018, the Prehearing Conference was held as scheduled and continued to April 23, 2018. On April 23, 2018, the Prehearing Conference was held as scheduled. As part of the Prehearing Conference, May 29 through June 1, 2018 were selected as the dates for the hearing and the deadlines for the exchange of witness and exhibit lists were established. On May 8, 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 granted and July 9 through 12, 2018 were selected as the new hearing dates.

On July 9, 2018, the hearing was convened as scheduled. Petitioner R.C. and Attorney John Brent appeared on behalf of Petitioner. Attorneys Gouri G. Sashital and

Mindy Barry and Director of Student Services Jennifer Taiariol appeared on behalf of Respondent. The hearing continued July 10 and concluded on July 11, 2018.

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

1. Petitioner Exhibits 1 through 6 were not offered.
2. Petitioner Exhibit 7 is an Individualized Education Program (IEP) Team Report, dated September 13, 2016.
3. Petitioner Exhibits 8 through 10 were not offered.
4. Petitioner Exhibit 11 is an Individualized Education Program Team Report, dated December 5, 2017.
5. Petitioner Exhibit 12 is an Individualized Education Program Team Report, reconvened December 11, 2017.
6. Petitioner Exhibit 13 is Notice for Provision of Programs and Services Individualized Education Program and Dissenting Report to IEPT.
7. Petitioner Exhibits 14 and 15 were not offered.
8. Petitioner Exhibit 16 is an audio recording of the December 5 and December 1, 2017 IEP team meetings.¹
9. Petitioner Exhibit 17 is an audio recording of the November 10, 2016 IEP team meeting.
10. Petitioner Exhibit 18 is Student Profile.
11. Petitioner Exhibits 19 through 24 were not offered.
12. Petitioner Exhibit 25 is LLI probes and Fountas and Pinnell documents.
13. Petitioner Exhibit 26 was not offered.

¹ At the hearing, Petitioner offered the written transcripts of the meetings as Petitioner Exhibit 16 and 17. Respondent objected. Petitioner then offered the actual audio to which Respondent did not have an objection but did not have copies for the Tribunal or Respondent available. The Tribunal took the offered exhibits under advisement with the understanding that the exhibits would be admitted after Respondent had an opportunity to review them unless Respondent raised another objection. Respondent raised no objection to the actual audio. Therefore, Petitioner Exhibit 16 and 17 were admitted.

14. Petitioner Exhibit 27-1 through 27-21 were not offered.
15. Petitioner Exhibit 27-22 is an email
16. Petitioner Exhibit 27-23 through 27-26 were not offered.
17. Petitioner Exhibit 27-27 is an email.
18. Petitioner Exhibit 28 was not offered.
19. Petitioner Exhibit 29 is application for employment.
20. Petitioner Exhibits 30 and 31 were not offered.
21. Petitioner Exhibit 32 is a Neuropsychological Report, dated January 8, 2018.
22. Petitioner Exhibit 33 is a Vocational Evaluation, dated June 27, 2018.
23. Petitioner Exhibits 34 through 36 were not offered.

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

1. Respondent Exhibits 1 through 3 were not offered.
2. Respondent Exhibit 4 is a Multidisciplinary Evaluation Team Summary, dated September 13, 2016.
3. Respondent Exhibit 5 was not offered.
4. Respondent Exhibit 6 is a Psychological Evaluation, dated January 7, 2013.
5. Respondent Exhibit 7 is an Individualized Education Program Team Report, dated November 10, 2014.
6. Respondent Exhibit 8 is a Notice for Provision of Program and Services, dated November 10, 2014.
7. Respondent Exhibit 9 is an Individualized Education Program Team Report, dated October 12, 2015.

8. Respondent Exhibit 10 is a Notice for Provision of Program and Services, dated October 12, 2015.
9. Respondent Exhibit 11 is an Individualized Education Program Team Report, dated March 8, 2016.
10. Respondent Exhibit 12 is a Notice for Provision of Programs and Services, dated March 8, 2016.
11. Respondent Exhibit 13 is an Amendment to Individualized Education Plan, dated September 8, 2016.
12. Respondent Exhibit 14 is a Notice for Provision of Programs and Services, dated September 7, 2016.
13. Respondent Exhibit 15 was not offered.
14. Respondent Exhibit 16 is a Notice for Provision of Programs and Services, dated September 15, 2016.
15. Respondent Exhibit 17 is an Individualized Education Program Team Report, dated December 13, 2016.
16. Respondent Exhibit 18 is a Notice for Provision of Programs and Services, dated December 16, 2016.
17. Respondent Exhibit 19 is an Individualized Education Program Team Report, dated December 5, 2017.
18. Respondent Exhibit 20 was not offered.
19. Respondent Exhibit 21 is Progress Report for October 12, 2015 IEP.
20. Respondent Exhibit 22 is Progress Report for September 13, 2016 IEP.
21. Respondent Exhibit 23 Progress Report for December 13, 2106 IEP.
22. Respondent Exhibit 24 is Student's transcript.
23. Respondent Exhibit 25 is a Developmental Reading Assessment (DRA), dated September 21, 2016.
24. Respondent Exhibit 26 was not offered.

25. Respondent Exhibit 27 is ACT WorkKeys Summary, dated June 20, 2017.
26. Respondent Exhibit 28 is the MiAccess Functional Independence Assessment Individual Student Report, dated 2017.
27. Respondent Exhibit 29 is a Reading Instruction Log.
28. Respondent Exhibit 30 is Speech Pathologist Service Logs.
29. Respondent Exhibit 31 is School Social Worker Logs.
30. Respondent Exhibit 32 is Board Policy regarding Graduation Requirements, dated May 18, 2015.
31. Respondent Exhibit 33 is Board Policy regarding Personal Curriculum Procedures.
32. Respondent Exhibit 34 is Student's Personal Curriculum, dated March 22, 2016.
33. Respondent Exhibit 35 is a draft Individualized Education Program Team Report, dated December 5, 2017.
34. Respondent Exhibit 36 was not offered.
35. Respondent Exhibit 37 is an email chain.
36. Respondent Exhibit 38 is an email chain.
37. Respondent Exhibits 39 and 40 were not offered.
38. Respondent Exhibit 41 is an email regarding SAT.
39. Respondent Exhibit 42 was not offered.
40. Respondent Exhibit 43 is Michigan Department of Education, Office of Special Education, Complaint Investigation Report, dated November 4, 2016.
41. Respondent Exhibit 44 is a Michigan Department of Education, Office of Special Education, Complaint Investigation Report, dated February 10, 2017.
42. Respondent Exhibit 45 is Michigan Department of Education, Office of Special Education, Complaint Investigation Report, dated June 16, 2017.

43. Respondent Exhibit 46 was not offered.

44. Respondent Exhibit 47 is a Student Transition Assessment Tool, dated November 8, 2017.

45. Respondent Exhibit 48 is a 2017 Reading Log.

46. Respondent Exhibit 49 was not offered.

The following individuals testified in this matter:

1. Marcie Lipsett, Parent Advocate
2. R.C., Petitioner
3. LeAnne Higgins, School Social Worker
4. Jennifer Tairiol, Director of Student Services
5. Rochelle Frankford, Speech Language Pathologist
6. Tim Newman, Special Education Teacher
7. Erin O'Callaghan, Vocational Rehabilitation Consultant

At the end of the hearing, it was determined that the parties would be permitted to file written briefs and closing arguments by July 30, 2018 and replies by August 8, 2018. Each party filed a timely closing argument and reply brief.

ISSUE and APPLICABLE LAW

During the Prehearing Conference, the following issues were identified for the hearing:

- A. Did the September 2016 IEP fail to provide FAPE to Student particularly concerning the Extended School Year?
- B. Did the December 13, 2016 IEP fail to Provide for Extended School Year services?
- C. Did the December 5, 2017 IEP fail to provide FAPE to Student because of a lack of reading goals?

D. Did the December 11, 2017 IEP fail to provide FAPE to Student in that it lacks measurable goals and an appropriate transition plan?

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). 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*. Therefore, 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)

The Sixth Circuit Court has established that ESY is appropriate if it prevents significant regression of skills or knowledge retained by the student that may seriously affect the student's progress toward self-sufficiency. *Cordrey v. Euckert*, 917 F2d 1460 (CA 6, 1990). It is the Petitioners that bear the burden of establishing, through data or expert testimony, that the Student will experience regression which cannot be recouped within a reasonable period of time. This burden is not alleviated or eliminated by the Respondent's failure to keep such data regarding the Student. *Kenton County v. Hunt*, 384 F3d 269, 279 (CA 6, 2004); R 340.1721e(3).

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 and admitted exhibits, the following findings of fact are established:

Student is currently 19 years old. He has been enrolled in the Livonia Public Schools for several years. He currently receives special education services.

In December 2012, a Psychological Evaluation was completed by Matthew Kokol, Ph.D., LP as part of a three-year evaluation. Student was 13 years and 6 months old at

the time and in the 7th grade. At the time, Student was receiving special education services as a student with a cognitive impairment. [Resp. Ex. 6]

As part of the 2012 Psychological Evaluation, the following tests were administered: Woodcock-Johnson 3rd (WJ-III); the Kaufman Test of Educational Achievement-2nd (KTEA-II); Behavior Rating Inventory of Executive Function (BRIEF); Vineland Adaptive Behavior Scales-2nd (VABS-II); Classroom observations and Current Teacher Reports. [Resp. Ex. 6]

On the WJ-III, Student scored a general intellectual ability of 62 in the 1st percentile or very low range. On the KTEA-II, Student exhibited academic skills in the areas of reading, math and with commensurate with his overall assessed cognitive processing abilities. All academic skills fall within the very low range relative to similar aged peers. On the BRIEF, Student demonstrated clinically significant deficits with the Metacognition Index and the Behavioral Regulation Index. [Resp. Ex. 6]

A Multidisciplinary Evaluation Team Summary was completed on September 17, 2013. A Review of Existing Evaluation Data was completed on September 16, 2013. A three-year IEP was completed on September 7, 2013 and an Annual IEP was completed on December 18, 2013. [Resp. Ex. 7]

On November 10, 2014, an IEP Team meeting was held. At the time, Student was enrolled in the 9th grade attending Stevenson High School within the Respondent School District. [Resp. Ex. 7]

The November 2014 IEP Team consisted of Gary Harper, District Representative; Mimi Higgins, Special Education Provider; Sandra Jouppi, Speech Language Pathologist; Tracy Crews, Occupational Therapist; Matt Fielder, general education teacher; R.C., Petitioner; Jennifer Taoriol, Coordinator; Leanne Higgins, School Social Worker; and Marcie Lipsett, Parent Advocate. Petitioner requested that Student not attend. [Resp. Ex. 7]

The Team determined that Student was eligible for special education services under the category Other Health Impairment, MARSE Rule 340.1709a. The IEP contained Student's Present Level of Academic Achievement and Functional Performance; Supplementary Aides and Services; Programs and Services and specific Annual Goals and Short-Term Objectives. The IEP had an overall plan that Student would participate in the Michigan Merit Curriculum leading to a regular high school diploma. [Resp. Ex. 7].

An annual IEP meeting was held on October 12, 2015. The IEP team included L. Lewis and Jennifer Taoriol, District Representatives; Tim Newman, Special Education Teacher; Sandra Jouppi, Speech Language Pathologist; Leanne Higgins, School Social

Worker; L. Righters, General Education Teacher; Petitioner; Student; Tracy Crews, Occupational Therapist; and Marcie Lipsett, Parent Advocate. [Resp. Ex. 9]

At the time of the October 2015 IEP, Student was in the 10th grade attending Stevenson High School in the Respondent District. Student continued to receive special education services under the Other Health Impairment category.

Under the October 2015 IEP, Student's educational program was the general education with accommodations and supports; Resource Room for 2 to 6 hours per week; Speech and Language for 20 to 30 minutes 3 to 4 times a month, and social work services for 20 to 30 minutes for 2 to 4 times a month at Stevenson High School. It was determined that extended school year (ESY) services were not needed. [Resp. Ex. 9]

As part of the October 2015 IEP, the team discussed Student attending the Churchill High School (CHS) center which provided direct instruction reading, however, Petitioner declined this option. [Resp. Ex. 10]

On March 8, 2016, an annual IEP team meeting was held. Participants at the team meeting included Lyndy Lewis, District Representative; Tim Newman, MET representative/ Special Education Teacher; Sondra Jouppi, Speech Language; Leanne Higgins, school social worker; Lori Richare (sic), general education teacher; Petitioner; Student; Jennifer Taiariol, Director; Monique Porter, Transition, MRS; Marcie Lipsett, advocate. [Resp. Ex. 11]

Student was in the 10th grade and attending Stevenson High School. Petitioner indicated that she wanted Student to have direct reading instruction. The team noted that Student was reading at the 2nd-4th grade level. The team determined that Student would continue using the Michigan Merit Curriculum leading to a high school diploma. [Resp. Ex. 11]

The March 2016 IEP team determined that Student would remain in the general education program with accommodations and supports. He would receive Resource Room support for 2 to 6 hours per week. He would continue to receive Speech and Language for 20 to 30 minutes 3 to 4 times a month, and social work services for 20 to 30 minutes for 2 to 4 times a month at Stevenson High School. Again, the Team determined that ESY was not needed. [Resp. Ex. 11]

Despite the Petitioner's concern for direct reading instruction and Student's clearly identifiable need for reading instruction, Petitioner and Student declined the offered direct reading instruction at CHS Center as part of the IEP team meeting. Petitioner and Student preferred that Student attend Stevenson High School even though there would be no direct reading instruction – merely support. [Resp. Ex. 12]

On September 6, 2016, an IEP amendment to the March 2016 IEP was implemented. The amendment increased Student's Resource Room time to 12 to 16 hours per week. It was during this time that Student and Mr. Newman worked on Student's reading goals. [Resp. Ex. 13]

In September 2016, Student was required to complete another three-year evaluation. A Multidisciplinary Evaluation Team (MET) consisting of School Psychologist Sarah Temkow; Speech Language Pathologist Sandra Jouppi; and School Social Worker Leanne Higgins completed a MET Summary. [Resp. Ex. 4]

As part of the MET evaluation, the Team noted that Student was in the 11th grade and working toward a high school diploma with extensive accommodations and supports. Student struggled with academic subject areas although his academic skills were commensurate with his general cognitive abilities. Student struggled with social problems and thought problems. Student exhibited a language impairment in his ability to process higher level language skills such as inferences, non-literal language and pragmatic judgment. Student continued to have difficulty recognizing situational and social cues given to him. He was attending a social language group and had worked on reading body language and facial expressions as cues to understand that the listener is not interested or engaged in what he is saying. [Resp. Ex. 4]

On September 13, 2016, a new annual IEP team was convened. The team consisted of Jennifer Taiariol, District Representative; Sarah Temkow, MET Representative; Tim Newman, Special Education Teacher; Leanne Higgins, School Social Worker; Sandy Jouppi, Speech and Language; Rochelle Frankford, Speech and Language; Julie Harb, general education teacher; Petitioner; Student; Marcie Lipsett, advocate; and Larry Jubenville, MRS Transition. [Resp. Ex. 15]

At the time, Student was in the 11th grade and on track for a high school diploma. Again, Petitioner indicated that she wanted Student in a phonetic based reading instruction program. [Resp. Ex. 15]

It was determined that Student would attend special education classes at Churchill High School for 5th and 6th hour. This would allow Student to attend pre-vocational class and an English Language Arts class that would provide direct instruction in reading. Student would be in general education classes with support. Student would receive direct/consultative speech and language services for 20 to 30 minutes 3 to 4 times a month and social work services for 20 to 30 minutes 2 to 4 times a month. Extended School Year services were not deemed needed. The programs and services under this IEP would begin on September 14, 2016. [Resp. Ex. 15]

It was also determined that the Team would collect data and another IEP meeting would be scheduled after November to review. [Resp. Ex. 15]

The IEP team convened on December 13, 2016 to conduct an annual IEP review. Dr. Taiariol, District representative; Tim Newman, Special Education Teacher; Anna McEwen, general education teacher; Petitioner; Leanne Higgins, School Social Worker; Rochelle Frankford, Speech and Language Pathologist; Marcie Lipsett, Advocate; and two other individuals met as part of the IEP team. [Resp. Ex. 17]

The December 13, 2016 IEP team noted that Student was making progress on his goals and passing his classes. The team also noted that Student has deficits in reading and writing.

The December 13, 2016 IEP includes four goals. The first goal is a Reading goal. The annual goal is that by December 2017 when given student selected informational and literary reading material, Student will demonstrate his reading skills by describing and summarizing text including the explanations or descriptions presented in the text with 75% accuracy as indicated by informal tests using both close and short answer questions bi-weekly. The second goal is also a reading goal. This goal states that by December 2017, given LLI text and direct instruction at CHS Center location, Student will independently be able to decode at a 2nd grade level / level K with a 90% or greater accuracy and reduce his self-corrections to 10-15 times during the reading passage as measured by bi-weekly running records.

The third annual goal is a pre-vocational / vocational skills goal. The goal is that by December 2017, given the opportunity to utilize computer programs, Student will document information applicable to three specific self-selected career choices that match his post-secondary vision of working in the automotive field, including wages, working conditions, machines and tools and technology used, educational requirements and employment outlook in the field as evidenced by a generated list by student and documented on vocational log sheets quarterly. Staff will support realistic career choices. In addition, Student will complete three job applications including personal information, education and references. This particular goal is supported by two objectives. The first is that Student will complete job applications using personal information, education, and references for various types of employment related to his post-secondary vision, utilizing technology quarterly as documented on printed or completed (with scribe/dictation) applications. The second objective is that Student will utilize computer programs to search for information and document findings that are applicable to three specific career choices in his post-high school vision of working in the automotive field, specifically wages, and post high school education needed. This will be documented by student on vocational log sheets quarterly. [Resp. Ex. 17]

The final goal in the December 2016 IEP is a language goal; by December 2017, Student will demonstrate an understanding of higher level language processes by explaining implied meanings and non-literal language during structured conversations

with peers with 80% accuracy as measured by informal test and speech data logs monthly and Student will identify social situations and lists steps for appropriate peer interactions in structured (speech/SSW) and unstructured (SSE/SE meetings) settings 80% of the time as measured by informal tests by Speech/SSW logs and SE provider logs on a monthly basis. [Resp. Ex. 17]

As part of Student's transition plan during the December 2016 IEP, it was noted that Student's plan was to try to find a job related to cars such as working with parts in a warehouse. It was determined that Student would set up a meeting with Michigan Rehabilitative Services (MRS) for job placement. This IEP meeting included representatives from MRS. [Resp. Ex. 17]

The IEP team determined that Student would take the Alternative Statewide Assessment for English / Language Arts; Math; Science and Social Studies.

The December 2016 IEP also identified a number of supports and services including reading accommodations to permit Student to access the general education curriculum.

Although Student had been attending Churchill High School and taking direct reading instruction, Petitioner requested that Student only attend Stevenson High School and obtain Resource Room services rather than direct reading instruction at Churchill. [Resp. Ex. 18]

Also, as part of this IEP, the team discussed Student having a fifth year of high school permitting Student to receive a full academic year of direct reading instruction. Petitioner specifically declined this program. It was more important to Petitioner that Student graduate in four years rather than receive direct reading instruction. [Resp. Ex. 18]

Petitioner testified that while attending Churchill High School, Student did not have Resource Room time resulting in increased homework; because Student was transported to Churchill High School and then home, he did not have his bicycle that was at Stevenson High School; additionally, Petitioner did not believe that the direct reading instruction was helping Student. Therefore, Petitioner refused to have Student attend Churchill High School and be on track for a fifth year of high school. [Tr. Vol. 1, pgs. 202-203]

On December 12, 2016, Petitioner filed a special education State Complaint with MDE. Petitioner alleged that the IEP failed to provide Student with special education programs and services in the least restrictive environment; whether the District developed measurable annual goals and short-term objectives; whether the services were provided; and whether the IEP team developed an annual goal for "school success". MDE found no violation in terms of the least restrictive environment; the provision of

FAPE and the measurable goals. MDE did find that the final goal related to school success was not tied to an identified need. [Resp. Ex. 44]

On April 17, 2017, Petitioner filed another state complaint. This complaint concerned the December 2016 IEP. Petitioner alleged that the District failed to provide Student FAPE; and that the District failed to follow the procedures and processes required by IDEA. Again, MDE found no violation. [Resp. Ex. 45]

Student took the Alternative Statewide Assessment. He scored 3213 in English Language Arts resulting in a surpassing score. He scored 3207 in Mathematics resulting in a surpassing score. He scored 3133 in Science resulting in a surpassing score. He scored 3133 in Social Studies resulting in a surpassing score. [Resp. Ex. 28]

On December 5, 2017 an IEP team meeting was convened. The team consisted of Dr. Taiariol, District Representative; Tim Newman, Special Education Teacher; Petitioner; Student; Leanne Higgins, School Social Worker; Rochelle Frankford, Speech Language Pathologist; Laurie Zorcmski, Facilitator/Mediator; Marcie Lipsett, Advocate; a general education teacher; and another social worker. Representatives of MRS were invited but were unable to attend. [Pet. Ex. 11]

The IEP plan was not able to be completed and the team reconvened on December 11, 2017. Student did not attend the reconvened IEP at Petitioner's direction. [Pet. Ex. 12]

The December 2017 IEP identified Student's Present Level of Academic Achievement and Functional Performance. The IEP provided for a lengthy number of supplementary aids and services. The IEP identified two specific annual goals. The first was a Language Arts Reading goal. The goal was that by June 2018, when given student-selected informational and literary reading materials, Student will demonstrate his reading skills by describing and summarizing 3rd grade text including the explanations or descriptions presented in the text with 70% accuracy as indicated by informal testing using both close and short answer questions bi-weekly in teacher log. [Pet. Ex. 11]

The second goal is that by June 2018, in order to meet his post-secondary goal of employment, student will demonstrate functional job interview skill as evidenced by appropriate non-verbal behaviors (i.e. appropriate introduction (solid handshake), appropriate posture (sitting upright in chair, arms not crossed, and appropriate eye contact) and appropriate verbal behaviors (i.e. greetings (full name), speaks clearly and distinctly, can articulate response to questions effectively, can describe strengths and weaknesses, and can describe appropriate employability skills to questions) as measured monthly by rubric with overall 80% accuracy in monthly tracking logs. [Pet. Ex. 11]

During the period of December 2017 through June 2018, Student worked on these goals with support from staff including mock interviews and completion of job applications.

Student's post-secondary goal is still to attend a program that will train him to get a job that is related to the automotive field. The IEP team noted that Student was on a diploma track and would have earned sufficient credits to graduate in June 2018. Student had taken small engines and introduction to automotive classes offered by the District. The IEP team also noted that Student had been working with MRS for post-secondary job skills. [Pet. Ex. 11]

During the December IEP meetings, Petitioner requested that Student have a 5th year of high school and a transition auto class at LCTC. The IEP team noted that by June 2018, Student would have earned 24 credits. He has made progress on his IEP goals and objectives. The IEP team found that no ESY was necessary for Student. Petitioner requested to withhold credit from one required academic class in order for Student to have a 5th year. [Pet. Ex. 11]

Petitioner requested that a representative of MRS attend the IEP meetings. A representative from MRS attended the 2016 IEP meetings. They were invited to attend both December dates. They were unable to attend but offered to meet with Petitioner and Special Education staff at another time. Petitioner refused all such meetings. [Pet. Ex. 13]

On June 27, 2018, Erin O'Callaghan completed a vocational evaluation report regarding Student. Ms. O'Callaghan noted that with Student's current level of competency it is not expected that he will have a successful transition to competitive employment. She notes that individuals below the 10th percentile in many areas are employable, however, Student falls below the 1st percentile rendering him unemployable at the time of her evaluation. [Pet. Ex. 33]

Ms. O'Callaghan testified that Student would not likely be successful in semi-skilled employment. She testified that only about 40-50% of individuals with a cognitive impairment are employable. She is unable to say definitively that Student would reach that level. She testified that Student is unlikely to have the ability to participate in automotive related work such as oil-changing or tire changing as these are complicated tasks. [Tr. Vol. III, pgs. 551-552]

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.

Did the September 2016 IEP fail to provide FAPE to Student particularly concerning the Extended School Year?

I find that all procedural protections were afforded to Petitioners in the development of the September 2016 IEP. The team consisted of the appropriate individuals. Notice was properly sent. Petitioner and her advocate were able to actively participate in the development of the IEP plan. There is nothing in the record to indicate that Student was at a critical stage of learning or where failure to provide a service beyond the normal school year would limit Student's capacity to acquire an essential skill. The IEP team considered Extended School Year services and deemed them not needed.

Based on the record, the IEP team considered Extended School Year services. There has been no evidence presented to indicate that in September 2016 Student was at risk of regression of any skills. It is the Petitioners that bear the burden of establishing, through data or expert testimony, that the Student will experience regression which cannot be recouped within a reasonable period of time. Petitioner has failed to establish that Student is eligible for extended school year services.

Did the December 13, 2016 IEP fail to Provide for Extended School Year services?

Based on the record, the IEP team considered Extended School Year services. There has been no evidence presented to indicate that in December 2016 Student was at risk of regression of any skills. It is the Petitioners that bear the burden of establishing, through data or expert testimony, that the Student will experience regression which cannot be recouped within a reasonable period of time. Petitioner has failed to establish that Student is eligible for extended school year services.

Did the December 5, 2017 IEP fail to provide FAPE to Student because of a lack of reading goals? Did the December 11, 2017 IEP fail to provide FAPE to Student in that it lacks measurable goals and an appropriate transition plan?

The December 5, 2017 IEP included a reading goal. The IEP was developed after a properly noticed IEP meeting. The IEP was not able to be completed and the IEP team reconvened on December 11, 2017 to complete the IEP.

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).

Student is entitled to an educational program reasonably calculated to make progress appropriate in light of his circumstances. 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 included goals to address Student's reading deficits. The goals have been clear and measurable.

The IEPs have also included accommodations and supports to allow Student to access the general education curriculum and graduate with a high school diploma. While Student's reading level is still significantly below his peers, the IEPs included reading goals and Student made progress towards those goals. The District has supported these goals through the efforts of Mr. Newman in working with Student to the extent possible. Petitioner herself is the individual who pushed to have Student removed from the Churchill program where he was receiving direct reading education.

When Student began high school, Petitioner and Student insisted that Student be on a diploma track and to graduate in four years. The District continually requested that Student attend Churchill High School where he would receive direct reading instruction and more life skill prevocational classes. The IEP teams have acquiesced to Petitioner's requests. This resulted in IEPs that had significant supports and accommodations to allow Student to access the general education curriculum or a personal curriculum where necessary. The District provided a special education teacher to attend Student's core curriculum classes. These classes were co-taught allowing the special education teacher to provide the reading and writing supports necessary for Student. Additionally, Student had resource room support where Mr. Newman worked on Student's reading goals. District staff testified as to the significant improvement Student made during his four years at the high school. This improvement was social as well as academic. Mr. Newman testified to the amount of hard work that Student put in to earn the credits necessary for graduation.

During the hearing, Petitioner and her advocate contended that the District failed to consider their input. The evidence submitted does not support this claim. Because the IEP team disagreed with Petitioner and did not always give in to her demands, Petitioner contends that the Team failed to consider her opinions. It is clear that the IEP team incorporated a number of Petitioner's concerns. The Team simply did not agree to Petitioner's unreasonable demand that credits earned by Student be withheld. The Team found that since Student had earned the required number of credits and had made significant progress over his four years at the high school, he had earned his high school diploma. The fact that the IEP team did not assent to Petitioner's request does

not mean she did not have an opportunity to meaningful participate. The record indicates that she was an active participant in the IEP team meetings

While Student's reading level is still only at about a 3rd grade level, Michigan does not have a minimum reading level for high school graduation. The Revised School Code has required classes that a Student must take and pass. The District has implemented a policy for graduation including the accumulation of credits and required testing. Student's IEP team determined that he would take the Alternative Statewide Testing. Student successfully completed the Alternative Statewide Testing. Student had a personal curriculum as authorized. Student successfully earned the credits required for graduation and successfully completed the Alternative Statewide Testing.

Petitioner also contends that she was bullied during the IEP meetings. There has been no credible evidence to support this contention; rather, the evidence and Petitioner's demeanor during the hearing indicate that Petitioner is the bully when interacting with the IEP team members. The IEP team meeting was facilitated by an independent outside facilitator. There is nothing in the record to indicate that District staff conducted themselves in any manner other than as professionals.

Petitioner has failed to establish that the December 2017 IEP failed to provide FAPE to Student because of a lack of reading or measurable goals and an appropriate transition plan. The IEPs contained reading goals. The goals were measurable. The IEP included a reasonable transition plan.

The Stay-put Provision prevented the District from awarding Student the high school diploma he earned. District is instructed to issue the high school diploma to Student. He has worked hard and earned the diploma.

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 September 2016 IEP did not fail to provide FAPE. Petitioner failed to establish that Student required Extended School Year services

I find based on a preponderance of the evidence, that Petitioner failed to establish that the Student required Extended School Year services under the December 13, 2016 IEP

I find based on a preponderance of the evidence, that the December 5, 2017 IEP provided FAPE to Student and included reading goals.

I find based on a preponderance of the evidence, that the December 13, 2017 IEP provided FAPE to Student including measurable goals and an appropriate transition plan.

ORDER

IT IS ORDERED:

1. Petitioner's complaint is **DENIED**.
2. The District shall issue Student his High School Diploma.
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 17th day of August, 2018.



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