

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania
Special Education Hearing Officer

DECISION

Child's Name: S. S.

Date of Birth: [redacted]

Dates of Hearing: 5/6/2016, 5/9/2016, 7/29/2016, 8/16/2016, 9/20/2016 and
9/22/2016

Closed HEARING

ODR File No. 17367-15-16

Parties to the Hearing:

Representative:

Parents
Parent[s]

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Date Record Closed:
Date of Decision:

October 22, 2016
November 6, 2016

Hearing Officer:

Charles W. Jelley Esq. LL.M.

Background and Procedural History

This matter was initiated by the Student's¹ Parents through the filing of a due process complaint by Parents' counsel. Six hearing sessions took place, with the last session ending on September 22, 2016. Both Parties requested extensions of the Decision Due Date at various times throughout the proceedings. Finding good cause after reviewing each written motion, the Decision Due Date was extended. The Parents contend the Radnor Township District (District) failed to provide the Student a free appropriate public education (FAPE), as defined in the Individuals with Disabilities Education Act (IDEA) and discriminated against the Student in violation of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA). The hearing officer directed the Parties to brief the issue whether the hearing officer has subject matter jurisdiction over the Student's ADA discrimination claims. For the reasons set forth in the attached ruling, I am dismissing the ADA claim for lack of jurisdiction; therefore, the ADA claim is exhausted.

As a remedy for the District's alleged violations of Student's rights, the Parents ask the hearing officer to order the District to educate the Student in a regular education classroom for all regular/special education academic classes, special subjects and to provide all related services in the regular education classroom to the maximum extent appropriate. The Parents oppose the District's proposal to provide the Student an additional 20 plus minutes a day of one-on-one pull-out specially-designed instruction outside of the regular education classroom. The Parents also contend the District failed to provide the Student with an appropriate reading instruction in the form of a systemic, structured, sequential, research-based reading program. The Parents argue that the Student's reading program fails to include direct instruction in phonemic awareness, phonics, fluency, vocabulary, and comprehension. To remedy the alleged violations, the Parents are seeking hour-for-hour compensatory education for the time spent in 2nd and 3rd grade. Finally, the Parents contend the IDEA violations contributed to the District's alleged discriminatory acts in failing to educate the Student, with supplemental aids and support, in the regular education classroom to the maximum extent appropriate.

¹ But for the cover page of this Decision, in the interest of confidentiality and privacy, the Student's name and gender, and other potentially-identifiable information are not used in the body of this decision. References to the record are placed in parentheses as (NT), references to the Parents' Exhibits are (P#) while references to the District Exhibits are (SD#).

On the other hand, the District argues that at all times it has provided the Student FAPE in the Least Restrictive Environment (LRE).

Prior to and throughout the proceedings, the Parties have zealously argued and advocated their positions. These advocacy efforts, however, have now resulted in a stalemate, as the Parties are no longer able to effectively communicate about the essential elements of the Student's IEP. On two occasions, the District asked this hearing officer to Order the Parties to participate in a facilitated Individual Education Program (IEP) conference. On the eve of the final hearing session, in anticipation of future proceedings, the Parents filed a motion to direct the District to implement the Parent-selected reading program, change the Student's pendent placement, and direct the District to implement a Positive Behavior Support Plan (PBSP)². To address this communication logjam, my final Order will direct the District to provide detailed and specific specially-designed instruction in the least restrictive environment.

After reviewing the exhibits, the testimony, and the transcript, I find that the District failed to provide the Student a reading program that was reasonably calculated to provide meaningful benefit and significant learning. Although the Student did not receive FAPE, the District was not deliberately indifferent to the Student's needs; therefore, I am dismissing the Student's discrimination claim.

While I accept the recommendations of the Parent's reading/literacy expert opinions about the Student's reading program, I am rejecting the Parents' inclusion expert's multiple opinions that the District failed to appropriately educate the Student in the LRE with supplemental aids and supports. For the reasons set forth herein, the District is Ordered to provide the Student with compensatory education.

Statement of the Issues

Did the District fail to provide the Student with FAPE, in the least restrictive environment during the 2014-2015 school year? If the answer is yes, is the Student entitled to an equitable award of compensatory education?

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² On multiple occasions, the Parties advised this hearing officer that regardless of the results here both Parties would file an action in federal court to review this decision. Looking so far forward the Parties may have lost sight of the present.

Did the District discriminate against the Student during the 2014-2015 school year? If the answer is yes, is the Student entitled to an equitable award of compensatory education?

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Findings of Fact

Background and History

1. The Student is [an elementary school aged child] who currently attends fourth grade at [a District elementary] School (SD#40). The Student [redacted] has been identified as a student with Intellectual Disability (NT 838-40, 842). The Student is eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA), and no party disputes eligibility for these services. The Student has impairments that substantially limit a major life activity, and thus is entitled to the protections of Section 504 of the Rehabilitation Act of 1973.
2. The Student has an Intellectual Disability with a Full-Scale IQ of 63. The Student has unique needs in the areas of functional academics, speech and language, occupational therapy, physical therapy, social skills and behavior (SD#40).
3. The overriding concern of the Parents for Student's education has always been inclusion in general education classes (NT 846-47). To emphasize how important it is that the Student's education start and stay in the general education classes, the Parents shared with the District a statement of their inclusive education vision for Student's future (NT 846-47).
4. The Student has attended school in the District since kindergarten. In order to provide the Student with FAPE, the District provided the Student with two half-day kindergarten sessions per day, a service that is not available to other students (NT 1377-78). When the Student began attending school in the District in kindergarten, the Student's IEP goals focused on self-help, safety, elopement. *Id.*
5. The Student's pre-academic skills were limited to sorting and matching (NT 1374). When the Student enrolled, the Student did not know the letters of the alphabet or any numbers (NT 1342). The Student could not sit, focus, or attend to learn how to read (NT 1383). The Student was not toilet trained. *Id.*

6. The Student could not hold utensils (NT 1375). The Student could not hold or eat a sandwich (NT 1344). The Student had very limited receptive and expressive language skills (NT 1375). Since kindergarten, the Student has made gains in the ability to label pictures that include nouns and verbs, spontaneous speech, intelligibility and engaging others (NT 353-355).
7. As of the beginning of fourth grade, the Student now can pick up a sandwich and take a bite; knows the numbers 1-10 and some numbers between 11 and 20; reads sight words independently and can pick out and match a picture of what the word says; can follow short directions; and can do short word puzzles (NT 1342-1344).
8. The Student can now attend and sit in class with peers (NT 1342-1344). The Student has progressed from sorting to working with letters and numbers. *Id.* The Student is now toilet trained (NT 1375). The Student can use writing implements. *Id.* The Student has moved from one-word utterances to putting words together, expressing wants, and needs. *Id.* The Student can travel around the school environment, up and down stairs and from class to class. The Student has shown significant growth in academics, speech and language, and communicating with peers in the classroom. Id.

The Student's 2nd Grade Year

9. During the 2014-15 school year, when the Student was in 2nd grade, the reading goal provided, "When given direct instruction and opportunities to practice with support fading to independence, [redacted] will demonstrate knowledge of all upper case and lower case letters with 80% accuracy on 4 out of 5 observable probes/opportunities" (S#17 p.11, 48). At the time the IEP was developed in May 2014, the Student had a baseline of recognizing 22 out of 26 upper case letters. The Student's progress report of March 11, 2015 indicates that the goal was mastered.
10. By the time of the annual IEP review in May 2015, at the end of the 2nd second grade year, the Student knew all the upper-case letters with 100% accuracy and 23 of the 26 lower case letters with 100% accuracy. The Student could match the capital and lower case letters independently, both with the physical letters and with paper and pencil. The Student could say each letter's name (S#24 p.11).
11. During 2nd grade, the Student's reading goals did not include instruction in the five essential components of reading instruction recognized by the National Reading Panel. Reading instruction includes phonemic awareness, phonics,

fluency, vocabulary, and text comprehension (S#24). Students in the District who do not have disabilities are taught all five components of reading recognized by the National Reading Panel. By third grade, most of the instruction in phonemic awareness and phonics has already occurred. In 2nd grade, the teachers instruct phonemic awareness so that this skill is mastered by third grade (NT 164-65).

12. The Student's special education teacher in kindergarten, first, second and third grade, (NT 1131), testified that the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) were administered to the Student every year (N.T. 1128). However, no present levels of achievement in phonemic awareness, phonics, and fluency are reported in the Present Levels of Academic Achievement and Function Performance (PLAAPF or PLEP) in the Student's IEP (S#22 p.9, S#28 p.10, NT 1133-34).
13. At the time the above IEPs were drafted, the Student was working on name writing, identifying the names of letters and matching words to pictures (NT 1133-34).
14. The Student's IEPs do not identify decoding as educational needs (NT 1200-1201). The District's Inclusion Coach testified that she believes that the Student could benefit from instruction in phonemic awareness, phonics, and decoding" (NT 1203).
15. During 3rd grade, the District's Inclusion Coach did not observe the Student being instructed in phonemic awareness, phonics or decoding (NT 1204). The Inclusion Coach testified that, "Last year when [redacted] was being instructed in reading, the Student was doing a combination of letter identification and sight word instruction. The Student had not mastered letter identification for all of [redacted] upper and lowercase letters. And so, following that, we would usually move into like phonemic instruction, the sounds associated with letters" (NT 1204-1205).
16. The Student's case manager agreed that all students should be taught all five components of reading instruction phonemic awareness, phonics, fluency, vocabulary, and comprehension (NT 504).
17. The District staff testified when the Student was in Kindergarten and 1st grade, as part of the general education curriculum, the Student received instruction in phonics. The staff also testified the reading program was Foundations. Foundations reading is related to the Wilson Reading System, and is a recognized phonetically-based reading program (NT 1352, 1353, 1358, 1453, 1458). During that time, the IEP did not include IEP goals or objectives in phonemic awareness or phonics. Instead, the only reading goal was "given

- direct instruction and opportunities to practice with support, fading to independence, [redacted] will sort, match and recognize letters and know the letters in [redacted] with 100% accuracy” (NT 1458, S#11 at 16-27; N.T. 1460).
18. In math, during the 2014-15 school year, the Student had a goal of recognizing and counting numbers 1-10. By May 2015, the Student met this goal. In June 2015, a new goal of recognizing and counting numbers from 0 to 20 was included in the IEP. The special education teacher reported that “[redacted] is able to recognize and count numbers 1-10 with 85% accuracy” and was working on recognizing and counting numbers 11-20. The teacher rated [redacted]’s progress as “Good progress being made”. *Id.*

The Planning, Program and Placement for 3rd Grade.

19. On May 12, 2015, near the end of second grade year, the parties participated in an IEP meeting to prepare for 3rd grade (NT 420).
20. At this meeting, the District recommended increasing the time that the Student would be removed from the general education classroom (NT 414).
21. The learning support teacher stated that she believed that the Student needed to be pulled out of the regular education classroom more often because she felt that additional pull-out time was needed to move the Student forward. The teacher stated that after reviewing the data she felt that she had to reteach the previous learned skill (NT 417-18).
22. The Parents opposed the increase in pull-out time and requested a facilitated IEP meeting so that a facilitator could help the Parties work together to plan how to support the Student in the regular education classroom (NT 868, S#24).
23. At the facilitated IEP meeting, the District agreed to engage in the Supplementary Aids and Services (SAS) Toolkit process and to maintain [redacted]’s then-current educational placement (S#24 p.40, NT 394).

The Supplementary Aids and Services Toolkit

24. When the Student began 3rd grade in September 2015, the Parents reported an increase in the noncompliant behavior (NT 866-67).
25. After the Parents rejected the proposed change of placement, they asked the District to participate in a SAS Toolkit process (NT .394-396).

26. The District agreed to participate in the SAS Toolkit process, (NT 394), to identify aids and services that could be used to support the Student in the regular class. The SAS Toolkit process is “a structured method to analyze the instructional, physical, and social environment of a general education classroom from the perspective of an individual student. The intended outcome of using this tool is to identify a list of environmentally-referenced supplementary aids and services to enhance participation and learning for a student with a disability in the general education classroom”. Pennsylvania Department of Education, Bureau of Special Education, “Inclusive Practices,” [http://www.pattan.net/category/Educational%20Initiatives/Inclusive%20Practices/page/Supplementary Aids and Services SaS Consideration Toolkit .html](http://www.pattan.net/category/Educational%20Initiatives/Inclusive%20Practices/page/Supplementary+Aids+and+Services+SaS+Consideration+Toolkit+.html) (visited February 11, 2016).
27. The Toolkit provided a forum for both Parties to discuss ways to support the Student’s performance and learning in the general education classroom (NT 877).
28. In September 2015, the Parties executed a Notice of Recommended Educational Placement (NOREP) that maintained the Student’s placement and the extent of removal from general education class that obtained in 2nd grade (20 minutes for reading and 20 minutes for writing). The Student also fully participated in regular education math with the learning support teacher (NT 308-309).
29. The SAS Toolkit was completed by a team composed of District personnel and the Parents with the aid of a trained facilitator from the [local] Intermediate Unit (IU) (NT 309).

The IEP Meeting on December 10, 2015

30. On December 10, 2015, the District and the Parents met in an IEP meeting to incorporate recommendations from the SAS Toolkit into the Student’s 3rd grade IEP. At the meeting, District staff stated that they had begun using some of the SAS Toolkit recommendations. Rather, than list the Toolkit SDIs the IEP simply stated, “See the SAS Toolkit” (NT 880-881). The SAS Toolkit was not attached to the IEP. *Id.*
31. As part of the discussion during the SAS Toolkit process about the Student’s participation in general education classes, the District’s inclusion consultant testified that she wanted to “jump start” Student’s literacy by increasing the Student’s pull-out time (NT 1183, 1255).

32. The District's consultant testified that the District members of the IEP Team recommended instructing the Student outside the general education classroom in reading for 30 minutes a day (NT 1191).
33. The only Specially Designed Instruction (SDI) in the IEP of December 10, 2015 that concerns instruction in reading called for direct instruction in the area of reading, math, and writing on a one-on-one basis as described in the placement section of this IEP. Direct instruction included using applied behavioral analysis (ABA) strategies, including errorless learning, reinforcement, prompting, chaining. Use of a systematic phonetic reading program is not included in the SDI (S#28 pp.42-45).
34. The section of the December 10, 2015 IEP on Educational Placement provides "[redacted] will participate in the general education curriculum within the classroom with modifications and accommodations as outline in the SAS Toolkit. In order to meet [redacted] learning needs, [redacted] will receive up to 30 minutes of Language Arts direct instruction daily, in a one-on-one instructional setting. [redacted] will also receive up to 20 minutes per day direct instruction for writing. [redacted] will receive math instruction in the co-taught classroom and in addition, up to 30 minutes daily of direct instruction in a one-on-one setting. Related services will remain the same as listed in this IEP including OT, PT, and speech" (S#28 p.53).
35. The special education teacher was unable to say whether the Student's performance in reading is consistent or inconsistent with the Student' IQ score of 62 on standardized testing of nonverbal intelligence. The Inclusion Consultant and the District members of the IEP Team prepared a report that stated the Student had not made adequate or consistent progress over the last two and a half school years (NT 1270).
36. Although the District agreed to incorporate some, but not all, of the SAS Toolkit recommendations into the December 2015 IEP, the District simultaneously proposed to increase the amount of time the Student would participate outside of the regular class from Itinerant to Supplemental (NT 881). When the staff recommended the increase in pull-out time, the Parents told the District staff that they did not agree to greater removal from general education classroom. *Id.*
37. At the IEP meeting on December 10, 2015, a new, different antecedent strategy was added to the PBSP: noncontingent reinforcement, defined as "the use of positive reinforcement that is not related to the occurrence of a target behavior. It involves delivering reinforcement on a fixed-time

schedule independent of whether the individual exhibits the target behavior during the interval”. According to the new strategy, “[redacted] will be working at a 1 to 1 ratio (5 minutes work, 5 minutes’ reinforcement). After data is collected, ratio will be increased to extend [redacted]’s required work time.” The District sought to change [redacted]’s placement at this meeting without waiting to assess the impact of the new behavioral strategy (S#29).

The Mediation Failed

38. After the Parents rejected the NOREP and prior to filing a due process complaint, the Parents attempted to resolve the dispute through mediation. The District agreed, and the parties met before a mediator from the Office for Dispute Resolution on February 3, 2016. The Parties did not reach an agreement on the Student’s educational placement for the 2015-2016 school year. In mediation, the District agreed that all the recommendations from the SAS Toolkit would be added to the Student’s IEP as specially-designed instruction. The Parties also agreed in mediation that “mentor text titles” used in Read-Aloud would be sent home for the Parents to review and pre-teach (NT 560-561).

The Student’s Reading Instruction

39. The Student’s last progress report for the 2015-16 school year stated that the Student knew 14 of the 15 sight words listed in the goal (NT 1207).
40. The Learning Support teacher, who instructed the Student in reading, testified that she did not use the Edmark program or any other specific named program. Rather, she worked on a program that “mimics” the sequence of the Edmark program, but instead used words that were chosen by the teacher. The teacher testified, “It was more words that [redacted] would be more comfortable learning that had something to do with function and everyday life” (NT 1262, 1358).
41. The December 10, 2015 IEP contains a single reading goal: “Given visual cues during one-on-one direct instruction, utilizing a most to least prompt hierarchy, [redacted] will acquire a sight word vocabulary of 15 functionally relevant words, with 80% accuracy over three consecutive data probes.” The objectives related to this goal were “Given picture cards and word cards, in a field of 8, [redacted] will match the picture to

the word and word to picture, for 15 functionally relevant words, with 80% accuracy over 3 consecutive data probes”; “Given word cards, [redacted] will read the word accurately for 5 functional words, with 80% accuracy over 3 consecutive data probes”; and “Given word cards, [redacted] will read the word accurately, for 10 functional words, with 80% accuracy, over 3 consecutive data probes” (S#28 p.3).

Reading and Language Arts in the Regular Education

42. During the 2015-2016 school year, after the Student left the Learning Support classroom, the Student would return to the general education class for the morning read-aloud instruction called “Making Meaning” (NT 1108).
43. The regular education classroom was very flexible and well organized. Students worked in small-group activities that offered opportunities to a student like [redacted] to participate in classroom activities (NT 758).
44. The SAS Toolkit process generated a recommendation that Student use levelled reading books that present the same concept on different levels. The Learning Support teacher did not know what, if any, levelled reading books were used; the Learning Support teacher did not consult with the teacher on that because she was not in the classroom at that time. She consulted only on the read-aloud activity (NT 1107).
45. The Inclusion Consultant created an “action plan” for Student’s team to enable Student to be more actively engaged in read-aloud activities in the third-grade classroom. The plan was designed to deliver the academic content of those activities so that Student could access the regular education curriculum (NT 1162; S#29 p.5).
46. The “action plan” called for the Student to use ear buds with “splitters” so that Student could listen with a peer. This strategy was implemented in the Social Studies class with a peer with “learning needs” so that Student could listen along with the peer (NT 1163-64). The regular education teachers also increased the use of visuals (NT 1164).
47. The Student’s 3rd grade teacher was aware of the research showing that students [redacted] can be taught to read phonetically (NT 90).
48. The third-grade regular education teacher created worksheets for some whole words as they came up in the regular education classroom (NT 91-92, 140).

The Parents' Inclusion Expert

49. The Parents' Inclusion Expert offered the following findings and recommendations as a result of his observation of the Student's program:
- (a) With supplemental aids and services, [redacted] can be educated satisfactorily in the general education classroom.
 - (b) Given the density of services and supports [redacted] now receives, it is not necessary to remove the Student from general education classes for many parts of the school day for [redacted] to benefit from education.
 - (c) The frequent transitions from the general education classroom to other therapy settings can cause significant disruptions to student learning and contribute to loss of skill synthesis for the Student (NT 752).
 - (d) Therapies, especially PT and OT, can be integrated into the typical activities of the general education classroom by developing goals that are aligned with the activities in the general education classroom. The expert opined that all of the skills he observed in the therapy sessions could be worked on in the general education classroom (NT 754, 761).
 - (e) The discrete skill instruction offered by the special education teacher in a separate classroom can be embedded naturalistically into planned general education activities in the general education classroom or, when necessary, conducted discreetly in the adjacent work area of the general education classroom (NT 764).
 - (f) The District should increase the use of evidence-based practices within the context of the general education setting.
 - (g) The District should increase effective collaboration and or co-teaching between the general education teacher and the special education teacher. *Id.*
 - (h) [redacted] needs goals and objectives that are aligned with the state standards rather than focusing largely on number and letter matching. [redacted]'s teachers should plan ahead of time to modify activities in the general education classroom so that [redacted] can participate. *Id.*
 - (i) Specially designed instruction such as System of Least Prompts and Time Delay should include research-based strategies for instruction or support rather than general and imprecise modifications. *Id.*

- (j) It is questionable whether [redacted]’s behavior support plan is implemented with fidelity. *Id.*
- (k) Strategies such as the use of peer supports, embedded instruction, pre-prepared academic activities and co-teaching should be put in place to enable [redacted] to benefit from instruction in the general education classroom (NT 766-69). General education students would also benefit from co-teaching and the presence of another skilled professional in the room. *Id.*
- (l) The use of modified curriculum should be increased.
- (m) The social benefit [redacted] receives from interaction with peers in the general education classroom would be enhanced if the aide does not present such a barrier to that interaction. *Id.*
- (n) Collaboration between general and special education should be enhanced. (Expert Report, P#39 pp.9-13).

The Literacy Expert and the District’s Reading program

- 50. The reading/literacy expert has significant expertise in instructing children [redacted] in reading and literacy (NT 584). The expert is a currently in training to be a certified practitioner of the Academy of Orton-Gillingham Practitioners and Educators and has almost completed that process. The Certified level is the fourth highest of five levels of credentialing recognized by the Academy. Orton-Gillingham training must be conducted directly by a Fellow of the Academy of Orton-Gillingham Practitioners and Educators (NT 597-92; P# p.30).
- 51. Orton-Gillingham is a research-based method of teaching all five components of reading instruction recognized by the National Reading Panel: phonemic awareness, phonics, fluency, vocabulary, and comprehension. It is explicit, systematic, and sequential. It is not a program but a method of teaching reading (NT 592-93, 593-94, 595-96, 602).
- 52. The Academy of Orton-Gillingham Practitioners recommends that to be qualified to instruct a student one-on-one, where diagnostic and prescriptive work is done, the instructor have achieved at least the Associate level of Orton-Gillingham certification. An Associate must have 60 hours of course work and 100 hours of supervised practicum experience, 10 observations, and submission of an application consisting of a sequence of lesson plans (NT 589-91, 604-605).

53. Approximately 90% of the expert's work consists of consultation and evaluations for school districts (NT 584). The literacy expert has evaluated and taught reading to about 30 students [specific descriptor redacted] over the course of her career. The expert is thoroughly familiar with the research on reading instruction for students [redacted] and has conducted a pilot study of teaching reading fluency to children [redacted], in partnership with a university professor in Connecticut (NT 605-608).
54. The expert frequently consults with school districts concerning the instruction of students [redacted] who are "stuck" at a particular level (NT 593).
55. The expert testified that the first critical area of reading proficiency is phonemic (or phonological) awareness, the ability to hear and manipulate sounds in words. This stage does not begin with learning letters. A significant body of research has established the relationship between the ability to hear and manipulate speech sounds in words and proficiency in reading and spelling (NT 595-96).
56. The expert testified that the next stage of reading proficiency is phonics, which involves connecting the sounds in words to letters. This stage involves learning the orthographic rules governing how sounds come together in the English language (NT 596).
57. The next stage of reading proficiency is fluency, the efficiency and automaticity with which a reader applies the lower level skills. Fluency is "the hub of the wheel" for reading proficiency. If a student is not a fluent reader, the Student will not be able to comprehend written material (NT 597).
58. The expert testified that the next stage of building vocabulary is built through reading and being read to. It is also built through hearing age-appropriate discourse and pragmatic language in classrooms (NT 595-597).
59. The expert testified that the majority of students who have difficulty in reading comprehension actually have word identification issues. The real difficulty for struggling readers, at the lowest levels, is recognizing sounds and isolating sounds in words (NT 595).
60. The expert testified that when she teaches reading, she embeds instruction in comprehension into instruction in phonetics and fluency. The expert testified that for students [redacted], comprehension is typically an area of weakness and they need explicit and intense instruction in comprehension (NT 599).

61. The expert testified students [redacted] should not be taught exclusively using a whole word or sight word approach. The sight word approach teaches students to memorize letters/words, instead of using their sound structure (NT 609, 615). The expert testified that when she observed the Student, the Learning Support teacher was using a whole-word approach, entirely (NT 612; P#38 p.6).
62. The expert testified that Student learns to read when the instruction focuses on decodable sounds (NT 612-615).
63. Absent instruction in decoding skills, the Student will be extremely limited as a reader. The expert testified that the Student must be explicitly taught how to read; otherwise, the Student will not learn to read. The expert also testified that knowing the sound the letter makes is a far more important skill than knowing the words (NT 615-616).
64. The expert recommended that the Student receive 60 to 120 minutes a day of explicit instruction either individually or in a small group (NT 628).
65. The literacy expert recommended that age-appropriate instruction in language arts and literacy in the general education classroom continue (NT 629).
66. The expert testified that no Student should be taught exclusively using a whole word approach. (NT p.609). The Student should not be instructed in whole word (NT 611).
67. Unless the Student is explicitly taught phonemic rules, the Student is never going to pick them up and will never be a true reader. Instead, the Student will just be a reader who has memorized a bunch of words (NT 616-617).
68. The District's program of learning to name letters, does not fall under the five critical areas of reading (NT 617). The District's program of learning to name letters does not teach decoding skills. *Id.*
69. Phonological awareness, phonics skills, and phonological awareness skills are independent of IQ (NT p.620).
70. The expert testified that her, "preference would be for the Student to have two hours a day, quite frankly. But I think the content and the exposure of the day is really important" (NT 632).
71. The Student's speech and occupational therapy (OT) services should be coordinated with the reading program (NT 633).
72. Observing other students reading and the dialogue is very important for the Student (NT 638).
73. There is no better person to work on phonological awareness than a speech pathologist (NT 646).

74. Word identification skills and reading comprehension skills were so weak they could not be meaningfully assessed (NT 671).
75. The expert testified that “Unless the classroom is working --third grade classroom is working on sounding out words like map, then the only way it could be done in the classroom is to put [redacted] in the corner, which is not appropriate. So [redacted] needs to be pulled out if it's a different concept or using a different methodology than what's going on in the classroom. So, in the case of word identification instruction, the bulk of it is -- the class is not getting foundations and if they did, it would not be at the right level for [redacted]. So, this would have to be a pull-out instruction, this component of it” (NT 678).
76. Sounding out words, blending sounds to form words and segmenting words into sounds should be done in parallel, coordinated fashion in speech therapy and reading. The expert testified the Student should learn to write the same types of words the Student is sounding out. The expert testified that the Student needs to hear the words and practice the rules repeatedly. The Student’s services must be coordinated (NT 633).
77. The expert testified that she was unable to administer a formal assessment to the Student in her office because of Student constant behavior and work refusal. “The minute [redacted] saw that we were going to be doing a non-preferred activity, [redacted] went under a chair.” The expert testified that she had never worked with a student before whom she could not evaluate. After witnessing how the Student reacted to and modeled typical peers in the general education classroom, the expert predicted that if another student had been sitting next to Student, it would have been much easier (NT 634-36; P#38 pp.11-14).
78. The expert was however unable to conduct an informal assessment of the Student’s literacy skills. In this assessment, the Student was able to provide the names of most single consonants letters and letter combinations using Wilson Program sound cards (P#38 p.12).
79. The expert testified that she assessed the Student’s ability to identify and spell words. The expert also testified that she assessed the Student’s knowledge and application of phonetic concepts using magnetic letter tiles (P#38 at 12). When a few letter sounds were presented orally, the Student was able to select the correspondence letter from a limited field (P#38 p.13).
80. When presented with magnetic tiles, the Student was able to place tiles corresponding to letters in a CVC target word when the word was orally segmented (P#38 p.13).

81. The Student's comprehension skills are a relative strength. During collaborative reading activities, the Student appeared to be consistently attending to the meaning of text – scanning pictures for clues to meaning and listening attentively as the text was read to [redacted]. The same attentiveness was evident during reading activities observed at school (P#38 pp.14-15).
82. When the expert observed the Student, during literacy instruction the staff provided the Student with modified materials (NT 638).
83. A speech therapist in the classroom could play a consultative function and assist the Student in learning generalization skills (NT 641-42, 651-52).
84. During the expert's observation, the 3rd grade teacher spent more time with the Student than he spent with any other student. However, the aide directed more of the Student activities than the teacher (NT 653-54) did.
85. In the general education classroom, the expert testified that the Student engaged in a modified version of the same activity as the other students, for example, reading a modified test, and sometimes in a different activity (NT 654-55).
86. In the expert's opinion, Student has not made meaningful progress in reading (NT 657).
87. The expert testified that Foundations would have been an appropriate program for the Student (NT 692-93).
88. The expert testified that without systematic, explicit, intensive, individualized instruction using a research-based, multisensory methodology such as Orton-Gillingham or one of its offshoots, it is unlikely that Student will ever become a "true" reader, as opposed to an individual who has simply memorized a bunch of words (P#38 at 15).
89. Parents' "literacy evaluator" is also not a certificated teacher or certified as a reading specialist (NT 663). The Parents' reading/literacy expert could not even meaningfully assess Student's reading comprehension skills because the Student's word identification skills were so weak (NT 671). The literacy/reading expert could not assess the Student's grade equivalents because Student is "so far off the main" (NT 672-667). The expert was not able to do any formal assessments of Student's PLEP (NT 668).
90. The literacy/reading expert testified that Student needs to be pulled out for word identification instruction for sixty minutes per day (NT 678). The expert stated that the instruction should happen in a well-matched small group or individually (NT 678). On cross-examination, the expert

conceded that there is no well-matched group of peers in Student's fourth grade class (NT 1356).

91. The "literacy evaluation" was not shared with the District until July 2016 (NT 1409). The literacy/reading report recommended 60 to 120 minutes per day of systematic, multisensory reading instruction (NT 1408, P#38, p.17). Prior to the expert's report, the Parents never made a request for reading instruction (NT 1408-1409). Had Parents made such a request, the District would have agreed to it, most likely breaking the 60 minutes per day into two thirty-minute sessions per day to prevent fatigue (NT 1418; 1357).
92. The May 12, 2015 IEP speech goal addresses listening comprehension and verbal expression, vocabulary along with phonemic awareness and phonology (NT 323). The Student also receives phonemic awareness instruction and phonics exposure from the special education teacher and through the use of applications on the iPad (NT 166-167). In the past, the Student also received instruction in Foundations, which is a phonetic-based program, in kindergarten and first grade twice a day for 40 minutes. (NT 332; 1354).

The Student's Behavior and Positive Behavioral Support Plan

93. The Parents' experts and the staff testified that the Student's behavior interfered with reading instruction (NT 1210).
94. The behaviorists who have analyzed Student's behavior all concluded that its function is to escape instruction (NT 517).
95. The Learning Support teacher testified that the aide "did more of the implementing of the plan (NT 1118).
96. The Learning Support teacher testified that some of the data on the on-task/off-task data sheets did show that the Student was noncompliant, sometimes [redacted in the] classroom, during sight word instruction (NT 1325, 1327, 1329, 1330, 1331, 1332, 1338).

The Student's Placement During the Pendency

97. In the fall of the 2015-2016 school year, the Student began to display increased noncompliant behavior. During the SAS Toolkit process, the Parents learned for the first time that the Student was spending a lot of [redacted]'s time in the classroom [redacted] and not wanting to work (NT 882).

98. In early November 2015, the District consulted with the BCBA who had developed the PBSP during the 2014-2015 school year. The case manager suggested that after consultation with the BCBA they decided to suggest a change to the Student's reinforcement system from a token economy approach to a system of noncontingent reinforcement (NT 564).
99. The BCBA testified that the Student "had possibly burned out on the items that we had assessed were highly effective the previous school year" and that the school staff were doing preference assessments to find out what types of things the Student would find motivating (NT 220). The BCBA on the Student's team recommended that the reinforcement system in the PBSP be changed to a system of noncontingent reinforcement at fixed intervals because the token economy system had "lost motivation" (NT 524).
100. The Parents and the District agree the current PBSP is no longer effective, and Student's noncompliant behavior had escalated to the point of significantly interfering with learning.
101. The change to the PBSP was not the type of change in the PBSP that would require another FBA but rather a change of reinforcement (NT 1431).
102. The Parents learned for the first time at the session of the due process hearing on May 9, 2016 during the BCBA's testimony that the system of noncontingent reinforcement that they believed they had agreed to at the IEP meeting of December 10, 2015 had not been implemented (NT 894, 930).
103. District staff who were responsible for developing and implementing the PBSP testified that the Parents did not tell them that they did not want the District to implement the system of noncontingent reinforcement (NT 527, 1121).
104. When the Parents rejected the NOREP, accompanying the December 10, 2015, IEP the District was not permitted to change the Student's program and/or placement (NT 928-929).
105. On the signature page of the NOREP accompanying the December 10 IEP, the Parents disapproved the IEP and stated that their reason for disapproval was "We disagree with increased pull out time" (S#28 p.66).
106. When asked at the hearing on May 9 2016, how long it would take to train the staff to implement the system of noncontingent reinforcement, the BCBA stated that it would be "[an] easy system to implement. No data collection or methods have [to] change, simply reinforcement. A token

economy is more comprehensive and is more to manage. In a noncontingent reinforcement program, the Student just picks the reinforcer before the timer starts. The timer goes for 5 minutes. If the Student does not display the behavior, then the Student is reinforced with the noncontingent reinforce”. When the BCBA was asked at the May 9, 2016, hearing session about the PSBP changes he stated that “It could start tomorrow” (NT 559).

107. On September 14, 2016, the Parents and the District attended an IEP meeting to try to resolve some of the areas of outstanding disagreement. The parties met for two hours, and the meeting ended without an agreement (NT 1430).

The Proposed Changes to the Student Participation in the LRE

108. The Assistant Director of Pupil Services, and the Student’s Learning Support teacher for three years, testified that the District, at an IEP team, recommended that the Student should receive more one-to-one academic instructional time. The District members of the IEP team believe that the Student requires one-on-one instruction outside the regular education classroom to learn new skills and maintain acquired skills (NT 1385-1386; 1342; 1354). The Parents did not approve that recommendation in 2014 (NT 1386).
109. The Student’s Learning Support teacher for three years testified that Student needs more one-on-one instructional time in order to learn new skills, and practice previously learned skills (NT 1345-1346). The Student’s Learning Support teacher emphasized that the Student needs practice in order to maintain skills (NT 1353). The Student’s Learning Support teacher explained that when working one-on-one, the instructor could get Student’s attention in a way that does not happen in the general education classroom (NT 1347).
110. The Speech therapist who is dually certified in special and general education and has a master’s degree in Special Education testified that believes that speech services in the regular education classroom is too distracting (NT 366-67). The Speech therapist agrees that Student needs more one-to-one time for intensive intervention in reading and math (NT 366-67; 382-383). The Speech therapist testified that the IEP team discussed and considered the benefits of Student receiving more one-to-

- one instruction, including repetition of material, at a different pace, with fewer distractions (NT 388).
111. Prior to this due process hearing, Parents have never requested that speech services be changed from pull-out to push in (NT 393) nor have they expressed any dissatisfaction with Student's progress in speech and language (NT 393).
 112. The last NOREP, which the Parents approved, was dated June 10, 2015 (SD#24, p.58-65).
 113. The pendant IEP developed on May 12, 2015 includes goals in the areas of time on task; task completion; word recognition; expressive and receptive language; following 1-2 step directions; number identification and values; scissor skills; grasp and fine motor precision; toileting; stair climbing; strengthening skills and gross motor tasks (SD#24, p.24-36).
 114. This IEP also provides a number of supports like, a Personal Care Assistant (PCA) throughout the day, Speech Therapy, Physical Therapy, Occupational Therapy, and Extended School Year. It contains a Positive Behavior Support Plan (PBSP), which is based on a Functional Behavior Assessment (FBA) prepared by person with a doctorate who is a Board Certified Behavioral Analyst (BCBAD) (SD#24).
 115. The pendant IEP provides for the Student to receive Itinerant level Learning Support, with Student being pulled out of the general education environment for 20 minutes per day in reading and writing each, 30 minutes of push-in specially-designed instruction in math in the regular education classroom as well as for multiple related services (SD#24).
 116. Prior to issuing that May 12, 2015 IEP (SD#24), the District originally presented the Parents with an IEP also dated May 12, 2015 (SD#22), which contained all the same services but which recommended that Student be pulled out for academics for up to 30 minutes each per day in reading, writing and math (SD#22, p.43). The second IEP is referred to as the 30-30-30 IEP. *Id.*
 117. The Parents rejected the original May 12, 2015, IEP (SD#22) and requested a second facilitated IEP meeting (SD#22, p. 58).
 118. The June 10, 2015, Notice of Recommended Placement (NOREP) reflects the last agreed-upon program and placement (SD 24, p. 58-65).
 119. The Parents did not return the June 10, 2015 NOREP for nearly three months, or September 11, 2015 (SD#24, p. 65; SD-23, p. 63-64).
 120. The Parties stipulated that the IEP found at SD-24 is the "pendent" IEP (NT 902-903). Although the District still believes that the Student requires

- at least 30 minutes of pull-out per day for reading, writing, and math each, the IEP team decided to hold a series of meetings to discuss the Supplemental Aids and Support Consideration Toolkit (SAS) (NT 1394).
121. The IEP team met on two occasions for over a full day and a half in the fall of 2015 to discuss the SAS Toolkit (NT 1392-93; SD- 43; NT 1166). In addition to District staff, two representatives from the Intermediate Unit (IU) attended the meeting, along with a BCBA employed by [another] Intermediate Unit (IU). The District has a contract [that] IU for services of an Inclusion Coach (SD#43).
 122. On December 10, 2015, the IEP team revised the IEP to include additional SDIs from the SAS tool kit (SD#28). During the IEP meeting, the District members of the IEP Team repeated the recommendation that the Student receive 30 minutes per day of pull-out support in reading and math each, and 20 minutes' pull-out in writing (NT 1399; SD-28, p. 53). The proposed IEP is often times referred to as the "30-30-20" IEP. Many of the SAS Toolkit SDIs were already included as SDIs in the Student's pendant IEP (NT 390; 1167).
 123. At the December 10, 2015, IEP meeting after reviewing the data, the District members of the team also recommended a change from the token economy reinforcement strategy to a noncontingent reinforcement strategy. Although the Parties agreed that the token economy was no longer having the desired effect of reducing escape behaviors, the Parties could never reach agreement when to start the PBSP (NT 1174-1178).
 124. It is not unusual for the team to suggest a change in the behavior plan or change a reinforcer when the student changes grade level and age (NT 549).
 125. The Student's general education teacher testified that there were twenty students in Student's third grade general education class (NT 180). The regular education teacher testified that the Student did not get the repeated practice and exposure to materials that the Student needed in the general education class (NT 184).
 126. On many occasions, the regular education teacher designed supplemental supports and modified instructional materials to enable the Student to participate in the regular classroom (NT 1840). The teacher testified that it was his belief the rate of interfering behaviors increased during the school year (NT 186).
 127. The regular education teacher testified that on several he observed the special education teacher use supplemental aids and SDIs to include the Student in math class (NT 195-196).

128. On a daily basis, the Student had multiple incidents of noncompliance in the regular and special education classroom, including [redacted] and multiple refusals to complete work (NT 186-189).
129. The regular education teacher testified that the Student lost half to three quarters of daily instructional time due to noncompliance (NT 190). The teacher also testified that between noncompliance and lack of stamina on a good day Student might accomplish one tenth of the work he prepares (NT 90-91).
130. The regular education teacher testified he had more adults in his room supporting Student than even at an open house. The regular adult visitors included the Student's case manager; the Doctorate level Board Certified Behavior Analyst (BCBAD) behavior consultant; a Board Certified Behavior Analyst (BCBA); the Student's PCA; the Student's behavior coach; the Student's inclusion coach; and the Student's speech, occupational therapist, and physical therapist supported the Student in the regular classroom (NT 95-101).
131. The regular education teacher provided the Student with many individual supports, to socially include the Student. To support the Student's full participation in regular education classroom, the teacher used a variety of the SDIs and SAS supports like using job groups; placing the Student at a table with peers; prompting interactions; walking to specials with the class; providing the Student with a modified copy of the same book as the peers; using Mentor texts (which are part of the reading and writing program); and preferential seating (NT 199-200).
132. The inclusion coach from the IU, under contract with the District, provided support for all team members, including the regular and special education teacher on how to meaningfully include the Student by modifying lessons and SDI delivery (NT 1162).
133. The regular education teacher testified that he observed the Learning Support teacher in math class develop and provide the Student with a number recognition worksheet (NT 203). The teacher also testified that Student's ability to match letters and sounds influences the Student's ability to comprehend text. To meet the Student's need, the teachers testified that they regularly worked on the letter recognition goal (NT 201-202).
134. The Inclusion Coach and the BCBA testified that in order for Student to make meaningful gain in reading instruction, Student needs more one-on-one instruction or small group instruction outside of general education (NT 1194). The Inclusion Coach and BCBA testified that she also believes that Student requires this one-on-one instruction in order to close

- the gap between math skills and the general curriculum (NT 1195; NT 554-555).
135. The staff testified that the change in pull-out time to 30 minutes in reading, 30 minutes in math, and 20 minutes in writing would not result in Student missing a full class period in any of those areas (NT 557). In fact, the change would be a ten percent reduction per day of inclusion, from 80 percent inclusion to 70 percent inclusion (NT 557).
 136. When presented with the December 10, 2015 NOREP and IEP, the Parents in handwritten comment on the NOREP stated that they “disagreed with increased pull out time” (SD#28 p. 66).
 137. The Parents never formally agreed to the changes in the behavior plan to noncontingent reinforcement (NT 525). The Parents conceded that no writing exists in which the Parents requested that any part of the December 2015 IEP/PBSP be implemented (NT 920-921).
 138. Although the Parents participated in mediation, they never formally requested the District implement the IEP/PBSP (NT 908).
 139. Following the filing of the due process hearing request, counsel for the Parents, Judith Gran Esq., emailed the District counsel requesting that the District confirm that the “last agreed upon placement is still in effect”, and threatening to involve this hearing officer if there were any issue (SD#50, p. 2). Parents’ Counsel made no request that portions of the December 2015 IEP be implemented (SD#50). District counsel responded that the District would continue to implement the “pendent IEP” (SD#50, p. 1). The District understood Parents’ request to mean that the District would continue to implement the May 12, 2015 IEP and June 10, 2015 NOREP (NT 1402).
 140. When the mediation was unsuccessful (NT 1403), the District subsequently offered to do a “trial” of the December 2015 IEP, but Parents refused to consent to the change in placement and program (NT 1403).
 141. At the hearing, the mother could not answer the question about which goals in the December 2015 IEP she agreed or disagreed with (NT 934-937). The mother did admit that some of the goals are challenging enough and appropriate, but would not specify which goals, objectives, or services were in dispute (NT 944-945). The mother did concede that in December 2015 she agreed with the SDIs and the behavior plan described in the December 2015 IEP (NT 920-921; NT 938). Parents concede that they have received and reviewed the IEP progress reports (NT 940). The Parents also concede Student has made progress, but that it is not “where it needs to be in terms of being delivered, how and where” (NT 944).

142. Although the Student's PLEP are in the Kindergarten level, the Parents believe the Student's goals should be written on a fourth-grade level (NT 945-946).
143. In connection with his report, the inclusion expert only reviewed the May 12, 2015 IEP. The inclusion expert did not review any reevaluation reports or progress reports (NT 785-786).
144. Without knowing the Student's academic ability, the Parents' inclusion expert "assumes" based on his one day observation the Student's goals "don't have the sufficiency...to allow [redacted] to have greater access to the breadth of the academic standards" (NT 793-794).
145. Despite the fact that he is not a speech and language pathologist, the inclusion expert gave an opinion on how a speech and language pathologist should implement a speech and language goal, based on what he has "read" and "observed" with other students. The Parent's inclusion expert testified that his Speech and Language opinions are based upon his limited observation of other students totaling five hours (NT 807-808).
146. Without reviewing any of Student's progress reports, the Parents' inclusion expert renders an opinion that Student was not receiving an appropriate education in the least restrictive environment (NT 832).
147. In the spring of 2016, the District conducted a Reevaluation and attempted to hold an IEP meeting in April 2016 to review that report (NT 1404).
148. In connection with its attempt to schedule an IEP meeting to review the results of the Reevaluation Report, especially since Student's annual IEP was due May 12, 2016, the District, through counsel, twice reached out to Parent's counsel to learn if Parents would attend the IEP meeting. Parent counsel replied by email to the second attempt as follows "... [T]his matter was dealt with long ago between the parents and the district. The district issued an invitation to attend the IEP meeting; the parents returned the invitation to participate with their response. The district has also received ample input from the parents concerning what they think [Student] needs in an IEP" (P#33, p.1-3).
149. When the District provided the Parents with notice of the IEP, the Parent agreed to attend the IEP meeting by phone, on the condition that the IEP meeting "open" and then immediately "end" without discussion of the content of the report, the PBSP, the IEP or the Student's progress (NT 1406-1407, P#33). Because of this mutual agreement, the District was therefore unable to meaningfully review the evaluation and the basis of the Parents' disapproval of the IEP and NOREP (NT 1407, P#36, 37).
150. After receiving the literacy expert's report at the August 16, 2016 hearing session, the District proposed on the record to hold another IEP meeting

during the due process hearing in order to address the report (NT 723-725). The Parent later agreed to attend an IEP meeting if her counsel were present (NT 729).

151. An IEP meeting occurred on September 15, 2016. During the meeting, the Parents requested the 60-minute per day reading instruction, which had been recommended by the expert, and the District did not refuse. Rather, it tried to discuss how such a program would be tied to the new reading goal the District was proposing specifically to address that literacy/reading program request (NT 1426), and which reading programs might be used (NT 1410;1411).
152. At the September 15, 2016 IEP meeting, Parents also requested – for the first time ever - that the paraprofessional support be eliminated suggesting the Student no longer needed the support based on Parents’ conclusion about Student’s experience at a non-academic summer camp in Summer of 2016 (NT 1412-1413). The District did agree to consider that request (NT 1413).
153. Both Parties ask the hearing officer to change the pendent placement and the pendent when it became apparent that they could not reach an agreement on 2016-2017 IEP, the reading goal, the PBSP changes, and the role of the PCA (NT 1414-1416).
154. Although the Parents’ experts did not comment on the Student’s related services, the Parents requested that the related services take place mostly in general education (NT 1416-1417). The related service staff was reluctant to change delivery so dramatically since Student has made gains. The staff however did agree to provide an occupational, speech, and language therapy observation in the general education classroom 20 minutes per month to target generalization (NT 1417). No agreements were reached during the September 15, 2016 IEP meeting (NT 1424).
155. Rather than participate in a continued IEP meeting, the Parents provided the District with a writing on September 21, 2016 listing their requirements for services and placement. They stated that they would not agree to any change in Student’s educational placement during the pendency of all proceedings in this matter (NT 1490-1492).
156. The Parents’ reading expectations exceeded the amount of Language Arts time the District was proposing for pull-out instruction, and the amount of pull-out time stated in the pendent IEP (SD#51).
157. In order to finish the IEP meeting that had commenced on September 15, 2016, the District twice requested on the record that the Hearing Officer direct the parties to participate in a facilitated IEP meeting in order to complete the IEP (NT 1285; 1448). To date, that IEP meeting has not been ordered, and has not occurred.

Analysis and Conclusions of Law

The 2nd and 3rd Grade School Years

While much has been said and even more has been written about the Student's program and participation in regular education, the legal issue is very basic. Did the 2nd grade IEP provide FAPE and did the proposed 3rd grade IEP offer FAPE.

First, I find the 2nd grade IEP did not offer or provide FAPE in reading. Second, while the progress in writing and math was modest, I find the Student did not make meaningful progress in writing. Third, the Parents did not seriously challenge the math goal, the Student's progress, or the Student's participation in regular education. Accordingly, I find the District provided the Student FAPE in math. I find the 3rd grade math goal offered FAPE, while the reading and writing goals did not offer the Student FAPE.

Exercising my equitable authority, I am directing the District to develop a prospective IEP consistent with the modifications, adjustments, and Interim Prospective Relief Ordered below.

First, very curiously, the Parents' Complaint (Compl.) admits the following relevant facts about the Student's program, placement, and progress. The Student "has blossomed and made impressive progress, both educationally and socially" (Compl. at para. 9). The Student has made "significant progress on the goals and objectives in [redacted] Individualized Education Programs" (Compl. at para. 11). The Parents then spend five paragraphs in the Complaint describing Student "more than satisfactory" progress on the IEP goals (Compl. p. 3-4). The Parents also admit the Student made progress on the goals prior to conducting or implementing the added SDIs after the SAS Toolkit (Compl. at para 23). Despite these clear admissions that the Student made progress, the Complaint does an about face and alleges that the goals should still be "improved", since they are allegedly "stock" and "unambitious" (Compl. at para. 14). The Parents then contend that despite the "significant progress" and "more than satisfactory progress" the Student was denied FAPE in the LRE.

Despite these odd admissions, the Parents now contend the Student did not make any progress whatsoever. The Parents did not submit any proofs on the amount of compensatory needed to make the Student whole; absent such evidence, the equities will guide the relief. The Parents' admissions, however, severely undercut the Student's hour-for-hour compensatory education claims.

The May 2015 IEP disagreement

At the conclusion of 2nd grade, the Parties met to review progress and develop the 3rd grade IEP. After discussing the proposed 3rd grade goals and objectives, the District proposed to reduce the Student's time in regular education by the sum total of 20 to 40 minutes. The Parents rejected the District's proposed action.

The SAS Toolkit and the December 2015 IEP

When the Parents rejected the District's action, the Parties agreed to work through the SAS Toolkit to review additional supplemental aids/supports that could improve learning, increase the Student's participation in regular education, and improve behavior. Although the Parties spent almost two days working through the SAS Toolkit, when it came time to develop a new IEP in December 2015 the District returned to its earlier position that the Student needed additional one-on-one pull-out time.

In December 2015, the District made two proposals. First, they recommended that the Student receive 20 minutes a day of one-on-one instruction outside of the regular education classroom in reading, 20 minutes a day of one-on-one instruction outside of the regular education classroom in writing, and 30 minutes a day of math instruction in the regular education classroom. In short, the District was proposing a net increase of 20 minutes a day of one-on-one instruction outside of the regular education classroom. At times, this IEP is referred to as the 20-20-30 IEP. As part of the discussions, the District also offered a second alternative commonly referred to as the 30-30-30 IEP offering an additional 20 minutes of one-on-one support. This IEP at times is referred to as the 30-30-30 IEP. The Parent quickly rejected each IEP. Despite the disagreement over where the Student would receive instruction, the Parties appeared to reach an apparent agreement to include many of the SAS Toolkit SDIs into the IEP along with significant changes to the PBSP. Sadly, even though the Parties had a tentative agreement on these two important points, the tentative agreement, by operation of law, was placed on hold when the Parents requested mediation and then due process.

Once the due process Complaint was filed, counsel for the parties communicated by email about the December IEP options, the SDIs, the PBSP and the application of "stay put" rule. The email communications, while apparently clear to each Party, ultimately contributed to even further confusion about when the Toolkit SDIs and the changes to the PBSP would begin. The Parents now contend the only aspect of the December 2015 IEP in dispute was the increase in pull-out instruction.

Based upon that belief, the Parents expected the District would immediately implement the Toolkit SDIs and the PBSP. The District on the other hand, relying on the “stay put” rule and the email exchange, believed they could not implement any of the Toolkit SDIs or the changes to the PBSP. I agree with the District on the “stay put” point, unless the Parties agree otherwise, which in this instance they did not, the PBSP or the Toolkit SDIs could not go forth.

On the two points that they seem to agree upon, the change to the PBSP and the Toolkit SDIs, although discussed on multiple times throughout the proceedings, the services and supports are still not in effect. Oddly enough when the District tried to have an IEP meeting, the Parents placed multiple conditions on their participation and limited the topics for discussion. When the April 2016 IEP meeting did occur, the Parents participated by phone. The Parents conditioned their participation on an agreement that the topics of discussions would be limited to the formality of opening and then ending the meeting in a matter of minutes. The requirement to have an annual IEP meeting to discuss the Student was viewed as an administrative formality rather than an opportunity. This joint working agreement would later create significant problems today because the Student’s FAPE is being held hostage by the “stay put” rule and the Parties ever increasing inability to confer and agree on an IEP.

The Parties’ single focus on where and for how long the Student would receive services blurred the IEP team’s mission to create, design, and implement an appropriate program. At times, the Parents’ laser-like focus on the location of the instruction bordered on a predetermination of the Student’s placement. This focus, at times, has prevented meaningful discussion of the Student’s abilities and achievements along with the Student’s need to make meaningful progress. Granted the IDEA’s preference for participation in the regular education classroom with supports is the preferred environment; yet the IDEA also requires the team to writing PLEPs and measurable goals, achieved through SDIs and related services throughout the day. This dispute highlights the tension between these two interlocking provisions.

The Parents retained two experts who each conducted extensive observations of the Student. While the observations were in-depth, for some unexplained reason the experts did not undertake a review of the Student’s educational records. The failure to complete even a quick record review is notable, as it limits the persuasiveness of the experts’ testimony. This omission also affects the calculation of the compensatory education relief.

The Regular Education Classroom with Supplemental Aids and Supports

To enable the Student to learn in the 2nd grade, the IEP included 21 SDIs. The SDIs were implemented in all settings throughout the school day. For example, to ensure the Student could participate in extracurricular activities, the SDIs called for the 1:1 aide to attend after school activities (S#17 p.43). To further ensure the Student participated with peers in the regular education classroom, the IEP called for the Student to receive a “flexible grouping” (S#17 p.52), with a “modified curriculum” (S#17 p.52) in the regular and special education classroom. To support the Student’s unique needs, the IEP provided for 20 minutes of one-on-one reading and writing instruction with the special education teacher outside of the regular classroom. Once the pull-out time expired, the Student was returned to the regular education classroom wherein the Student was supported with SDIs, along with supplemental aids and supports.

In math, the Student received on-on-one direct instruction, using modified materials in the regular class with the special education teacher (S#17 p.52). In language arts, the Student received on-on-one and small group instruction in the regular class (S#17 p.52). The 2nd grade IEP was modified to add the results of an FBA and updated reading, math, behavioral, expressive, and receptive language PLEPs (S#17 pp.12-14). The IEP also incorporated numerous revised behavioral strategies to support the Student throughout the school day (S#17 pp.68-76). The IEP team tracked the Student’s on and off task behavior in the regular and special education classroom. The IEP notes, at one point, that during five separate observations in one day the Student met the goal criterion on only one occasion (S#17 pp.71-72). Clearly, the District made concerted efforts and made provisions for the Student to participate in the regular education classroom with supplemental aids and services.

In December 2015, in preparation for the IEP meeting, the District staff in consultation with the Inclusion Coach prepared a summary report concluding “... has not made adequate or consistent progress with the current levels and intensity of instruction over the past two and half school years” (S#33 pp.1-3). This emphatic statement made during the IEP meeting seriously undermines the District’s earlier progress statements. The December no progress report and statement is the first time the District either knew or should have known the Student was not making meaningful progress.

When the team spokesperson was asked about the no progress report, the witness testified the described failure to make adequate progress was tantamount to not making meaningful progress. The District’s suggested solution to remediate the lack of

progress called for an increase in pull-out instructional time using relatively the same SDIs, instructional/behavioral supports, and curriculum that did not work. This recommendation absent changes to the reading goal and SDI was inadequate, inappropriate, and insufficient in light of the Student's PLEP. The suggestion to continue to educate the Student in the same fashion that caused the lack of progress is a disconnect. The IEP team's lack of progress report is supported by the record.

The Student's writing goal for the 2014-2015 school year provided, "When given direct instruction and opportunities [to] practice and a field of no more than 10 letters with support fading to independence, [redacted] will be able to correctly spell [redacted] first name [redacted] with 80% accuracy on 4 out of 5 observable probes/opportunities". The Student's progress report from December 10, 2014, indicates that the Student met and exceeded this goal, less than halfway through the school year. The IEP team also reported that the Student could pick out the letters and say them even if there are more than 10 letters in the display. Despite the numerous distractors, the Student could perform under these conditions 100% of the time without prompting. In reviewing the document, I find that while the Student was learning, the Student never mastered and maintained the skills.

In math, during the 2014-2015 school year, the Student had a goal of recognizing and counting numbers. At the end of the IEP term, in May 2015, the Student met the math goal. A month after the IEP for the 2015-2016 school year was developed, the IEP team met again and prepared a new goal of recognizing and counting numbers from 0 to 20, was developed. The special education teacher reported that "[redacted] is able to recognize and count numbers 1-10 with 85% accuracy" and was working on recognizing and counting numbers 11-20. The teacher reported the Student's progress as "Good progress being made".

The Inclusion Expert's Opinion about the Supplemental Supports in the LRE

The Parents' second expert testified about his math, science, social studies and language arts observations. This expert testified that the supplemental aids and supports provided to the Student were inadequate and therefore inappropriate. While the expert has an interesting and well-developed background, is a respected faculty member, neither the expert's testimony nor the report were based on any first hand assessments or evaluations of the Student's ability, performance, or learning. The expert's testimony and narrative instead reflect an ongoing real time critique of how the District staff instructed the Student. The report and the testimony lack an objective assessment of the Student's PLEP, a review of the Student's educational record, the Student's ability, potential, or achievement testing. The expert did not testify that the staff failed to

implement the IEP or that the SDIs did not provide meaningful benefit, rather his testimony focused on his perception of a better way to provide the supplemental aids and supports. While supplemental aids, modifications and accommodations are important, the SDIs, the goals, the short-term objectives and PLEP are the bedrock of objective progress measurements. While the expert's observations and opinions are probative, they are not based on a complete factual review of the record. The expert's failure to review the record leads me to accord reduced weight to his testimony. Accordingly, I find the Parent failed to produce preponderant evidence of a denial of FAPE in math.

I also find the Parents did not meet their burden of proof that the District failed to include or educate the Student in the LRE. I also find that the Parents did not prove the SDIs, goals, and supplemental supports/aids did not provide meaningful educational benefit in all other regular education classrooms. But for the factual findings and conclusions of law related to reading and writing, I also find the Parents failed to prove the Student was denied equal access or participation throughout the day in the regular education curriculum. Accordingly, I find the Parents have failed to meet their burden on proof as it relates to a standalone math or participation in the LRE violation.

The Literacy/Reading Experts' Observation and Expert Reports

To support their emerging position about the lack of reading progress, the Parents retained an expert in reading/literacy with extensive knowledge about proven strategies for persons with intellectual disabilities. Although the witness is not a teacher, a reading specialist, or a psychologist, the witness's background, training, and experiences helped shed valuable insight into the District's fundamentally flawed reading approach. What to some might appear to be a difference of opinion about reading methodology, in this instance, however, the dispute is in fact a well-taken observation about the District's insufficient, inadequate, and inappropriate reading program.

The Parents' literacy expert testified that the District's sight vocabulary/reading program did not provide the Student with direct instruction in all of the essential elements of reading.³ Absent, direct reading instruction the expert opined that even if the Student mastered the list of sight words the Student would never learn to read. When the Student's teacher of three plus years was questioned about the origins of the

³ Reading includes teaching all five components of reading instruction recognized by the National Reading Panel: phonemic awareness, phonics, fluency, vocabulary, and comprehension (N.T. 592-93, 593-94, 595-96, 602).

list of sight words, it quickly became apparent that the list was not linked to the District's curriculum, any standard reading program, or any recognized functional word list. Furthermore, the teacher testified the list was not compiled after an assessment of the Student's knowledge of functional words regularly used in the community.

The sight word list reading approach does not teach the discrete fundamental reading skills needed to learn how to read. I find it odd that the District changed the Student's reading curriculum at the beginning of 2nd grade, from a recognized research-based reading program absent a review of the Kindergarten and 1st Grade PLEP data. Neither the teacher nor the other well-meaning witnesses could testify why the District abandoned a research-based program in favor of a sight word program. In fact, when the long time special education teacher was pressed about the 1st grade phonetic-based reading program she was unable to testify about how the program was provided or what the Student learned. The more telling point, for this hearing officer, is the fact that the special education teacher candidly admitted she never reviewed the data taken by the regular education teacher who at time instructed the Student. Absent a review of the PLEP baseline data, the Student ultimately lost the opportunity to learn how to read. Accordingly, the wholesale move to the sight word reading approach is unacceptable and inappropriate.

Finding the Student was so far behind when compared to the other 3rd graders; the expert opined the Student needed at least 60 to 120 minutes of combined reading and writing instruction each day. Curiously, contrary to the Parents' position that all instruction must occur in the regular class, the Parents' expert testified that the prospective reading instruction should include pull-out and push-in direct instruction.

Therefore, I find, in light of the missing/un-reviewed Foundations data, the December 2015 report, the decision to increase the level of pull-out and push-in support in reading and writing was not reasonably calculated to provide meaningful instructional benefit in the regular and special education classroom. Finding that the Student did not receive FAPE in reading and writing, I do not need to reach a decision on the Parents' standalone LRE issue.

The Student's PBSP in the Regular and Special Education Classroom

By December 2015 of the second grade, the IEP included an updated behavioral support plan to address the targeted behavior of "work refusal". The target behavior was defined and included actions such as saying "no" and shaking your head "no" that are not in fact work refusal. The strategies in the plan included the use of a token economy, errorless learning, and prompting. When the token economy did not produce

significant learning, the District promptly recommended alternative strategies, goals, and SDIs. While the Parties agree that the PBSP should be updated, the agreement never became a reality. The District's rapid response to the Student's behavioral needs mitigates against factually finding a denial of FAPE for failing to implement the changes to the PBSP. The confusion over what changes to the IEP or the PBSP that were agreed to and in dispute were otherwise resolved after the email exchange between the lawyers. The District applied the ordinary meaning of the "stay put" rule and did not make any changes. To the extent the Parent wanted certain portions of the IEP implemented they too were unclear in their consent. Therefore, I find the District's December 2015 PBSP offered FAPE. I also find the District December 2015 PBSP was reasonably calculated to provide meaningful education benefit. While the PBSP was not implemented, I do not find fault with the District for the delay in providing the PBSP during the "stay put" period.

Section 504

The District tracked the Student's progress, committed significant resources, and offered a variety of instructional, behavioral supports, and supplemental aids and services. For example, to ensure the Student was provided an equal opportunity to benefit from participation in the LRE, the District offered to implement the PBSP. The Parent's multiple admissions in the Complaint also undercut the discrimination claim. The District made multiple attempts to hold an IEP meeting to discuss the Parent's multiple experts' reports. I find at all times relevant the District was open to meet, confer, and discuss the Student's needs. This is not to say that the District would agree with the Parents' proposals; the record does however reflect the District remains open to participate in a flexible interactive dialogue. When the record is viewed as a whole, I find the District was not deliberately indifferent to the Student's needs, rights, and multiple requests for accommodations. The Parents did not offer any testimony that links the District services to preponderant proof that the District discriminated against the Student based on the Student's disability. Therefore, I find the Parents failed to meet their burden of proof. The Section 504 claim is dismissed.

Compensatory Education, the Pendent Placement, and Prospective Appropriate Relief

The Calculation of the Amount of Compensatory Education

The Parents' experts did not provide any testimony about the amount of time or services needed to calculate the retrospective make whole remedy. Likewise, the Parents did not provide any specific testimony on when the compensatory education claim

accrued. Rather than present such testimony, the Parents request that the hearing officer equitably apply the hour-for-hour cookie cutter approach. Similarly, the District did not offer any testimony of the reasonable rectification period. Absent these crucial facts, I find that I can equitably calculate the compensatory education relief.

The Parents' literacy expert observation occurred in the spring; the literacy report was provided to the District in late July or early August 2016, when school was not in session. Once the District received the report, they immediately asked the Parents to participate in an IEP conference. The first time the Parties could or would meet was in September 2016.

When the Parties could not reach an agreement about the reading report and the PBSP, the District requested this hearing officer order the Parties to participate in a facilitated IEP meeting. At the same time, the Parents, on the eve of the last hearing session requested the hearing officer order the District to implement bits and pieces of the draft September 2016 IEP, that included a reading/literacy goal and the PBSP that was not yet in evidence. Although I took the September 2016 IEP under advisement and made it a hearing officer exhibit, I now conclude I do not have authority to rule on the appropriateness of the September 2016 IEP. Neither Party has provided any evidence or testimony about the IEP. Therefore, I will not rule on an IEP that is incomplete and not factually described in the record. Under these circumstances, any decision on my part would not be supported by preponderant evidence in the record. A determination about the appropriateness of the September IEP would deny both Parties their substantive and procedural due process rights and would be speculative at best.

The record is however preponderant on the following facts. The Student was scheduled to receive 30 minutes a day of reading, math, and writing five days a week. Each day part of the reading and writing instruction was split between the special education teacher and the regular education teacher. The Student's interfering behaviors occurred throughout the day; the PBSP was implemented throughout the school day in each class. The case law provides that the Student's compensatory education claim accrues when the District either knew or should have known about the alleged denial of FAPE. I conclude there are two different accrual dates, one for the reading and writing, and one for the PBSP.

The Parties agreed in December 2015 that the PBSP changes were needed. However, when the District offered to implement a revised PBSP, the Parents requested mediation and then filed a request for the hearing; each proceeding prevented implementation of the PBSP, absent consent. Although the District's behavior specialist testified in May 2016 the PBSP could be immediately implemented, the

District was reluctant to implement the PBSP absent an IEP meeting. The District's reluctance to implement the IEP was linked to the fact that the non-contingent reinforcement was connected to the proposed 3rd grade IEP goals, objectives, and the SAS tool kit SDIs. I find that the District acted reasonably in not implement the PBSP, without benefit of an IEP team meeting. Under these circumstances, the District refusal to unilaterally implement the PBSP was justified. Selecting December 2015 or any other date as the accrual date for the PBSP compensatory education claim penalizes the District when it was precluded, either by law or by the circumstances, from taking action. Accordingly, I will not award any compensatory education for the failure to implement the December 2015 PBSP.

Although the reading specialist report was received during the summer of 2016, the report was not presented to the IEP team until September 2016. While the expert's report is useful in crafting the interim prospective relief, I find the December 2015 IEP Team report admitting a two and a half year period of no progress, is the accrual date when the District either knew or should have known about the denial of FAPE. The December 2015 report also defines the scope of the denial.

Although, the District did not present any evidence about the length of the reasonable rectification period, I find relying on the IDEA regulations I can calculate the rectification period. The District's December 2015 report established the date the District knew that the Student was not making meaningful progress for two and half years. The Parents and the District previously executed a binding waiver and release; therefore, I am not inclined to award a make whole relief that is beyond the two school years at issue in the Complaint. The Student had reading class five days a week for 30 minutes each day. Therefore, the District is Ordered to provide the Student with 30 minutes a day of compensatory education for each day the school was in session during the 2014-2015 and the 2015-2016 school year. The Parents can use the compensatory education to provide corrective, developmental, and remedial reading services. Based on the Parents' expert report I find that the Student's reading and the writing instruction are intertwined, therefore I also award 30 minutes a day of writing instruction compensatory education for each day the school was in session during the 2014-2015 and the 2015-2016 school years. The Parents can use the compensatory education to provide corrective, developmental, and remedial writing services.

The Parent can select the compensatory education service provider. The District should reimburse the service provider at the customary rate for services rendered in the market or location where the services are provided to the Student. Since the District has an affirmative duty to provide FAPE, to ensure the District is aware of the Student's

changing reading and writing gains, arising from participation in the compensatory education services, I am directing the third-party provider, to provide the Parent and the District a progress report four times a calendar year. I also find the reasonable rectification period is 5 days (30 hours). Therefore, the Student's compensatory education award is equitably reduced by 30 hours.

Interim Relief

On the last day of the hearing, the Parties provided the hearing officer with a September 2016 draft IEP. Unable to agree to a 2016-2017 IEP, the District asked the hearing officer to Order the Parties to participate in an IEP meeting. The Parents on the other hand, asked the hearing officer to Order the District to provide, bits and pieces of the incomplete September 2016 IEP. Essentially, the Parents asked the hearing officer to order the District to implement the reading program in the regular education classroom with the PBSP.

In response to this 11th hour request, the hearing officer made the September 2016 IEP a hearing officer exhibit. Anticipating an appeal of this decision, both Parties urged the hearing officer to review the September IEP and then craft an interim Order changing the Student's program and pendent placement. After reading the record, I now find that I cannot factor in the September 2016 IEP into this decision. First, the IEP was never finalized by the IEP Team. Second, the District never offered the Parents a NOREP describing the District proposed action. Third, the record is devoid of any testimony on the appropriateness of the IEP. Any ruling on the IEP would be speculative. Furthermore, any ruling on the September IEP, would deny both Parties their substantive and procedural due process rights.

In conjunction with the discussions about September IEP, at the close of the hearing, the District was directed to provide the Parents' counsel with a draft Order suggesting modification to the Student's program and placement. Once received Parents counsel was instructed to review and markup the Draft Order and provide the Draft Order to the hearing officer for review. After a flurry of emails on November 3, 2016, and November 4, 2016, the Draft Order arrived on Saturday, November 5, 2016, the day before the Decision Due Date in this matter.

Recognizing that the Parties are reluctant to meet, confer, and agree, after a detailed review of the more than 1400 pages of testimony I am exercising my equitable authority and Ordering the District to provide the following interim prospective relief.

Appropriate Prospective Relief

The Student's FAPE has been held hostage by the Parents' vigilance and both Parties' zealous advocacy. Notwithstanding, each Parties strongly held viewpoints, the Parties inability to communicate has created an untenable situation for the Student and the IEP team. I find it unacceptable, that the Student is now in 4th grade yet the Student is participating in a 2nd grade program with outdated PLEP, SDIs, goals, objectives, related services, including supplemental aids, supports, and services. I also find that any further continuation of the pendent program and placement without benefit of the agreed upon changes to the PBSP would cause the Student to suffer academic, behavioral, and social harm. Finding exigent and urgent circumstances, I am exercising my equitable authority and Order the following Interim Equitable Appropriate Relief:

The District is Ordered to provide the following Interim Equitable Prospective Relief:

1. The District is Ordered to provide a research based phonetic-based reading program.
2. The District is Ordered to provide a research based writing program.
3. Within 15 calendar days of this Decision, the District will conduct a curriculum-based assessment of the Student's reading skills including but not limited to all five components of reading instruction recognized by the National Reading Panel, (1) phonemic awareness, (2) phonics, (3) fluency, (4) vocabulary, and (5) reading comprehension. As the research-based Foundations reading program is readily available in the District, the District is directed to use the Foundations phonetic reading program as the basis for reading instruction. If Foundations is not available, the District is directed to secure the program and train the staff to implement the reading program as stated herein.
4. Within 15 calendar days of this Decision, the District is Ordered to conduct a curriculum-based assessment of the Student's writing ability.
5. Five school days after the assessments are completed; the District will prepare an IEP with goals, objectives, SDIs, supplemental supports and services in reading and writing. Once the goals, objectives, SDIs, supplemental supports and services are prepared in draft form, the District is directed to provide the draft IEP to the Parents. Five calendar days later, the District and the Parents shall participate in an IEP meeting to review, confer, and revise the Draft IEP.

6. Based on the literacy expert's report, the District will provide the Student with 60 minutes a day of reading instruction. Thirty minutes (30) minutes of instruction will take place, outside of the regular education, in a one-on-one pull-out instructional setting. Based on the literacy expert's report, the District will also provide the Student thirty minutes (30) minutes of reading instruction in the regular education classroom implementing the goals, objectives, SDIs, and supplemental aids and services, with the support of a special education teacher.
7. The District is Ordered to provide the Student with fifteen (15) minutes of one-on-one writing instruction outside of the regular education classroom and fifteen (15) minutes of writing instruction in the regular education classroom with supplemental aids, SDIs, and supports.
8. The District is directed to implement the December 2015 PBSP throughout the day.
9. In addition to the reading and writing instruction, the District should provide thirty (30) minutes of math instruction in the regular education classroom with the support of a special education teacher.
10. Consistent with the December 2015 IEP, the District will provide one-on-one instructional support from an aide or a special education teacher in all other 4th grade regular education classes along with supplemental aids and services in the LRE.
11. The District should implement all of the SDIs, accommodations, and modifications found in the December 2015 IEP, including all the 2015 SAS Toolkit SDIs.
12. All related services listed and provided in the pendent and the December 2015 IEP will be provided in the instructional setting as listed the December 2015 IEP.
13. In the event the Parties cannot reach an agreement about the reading goal, the math goal, the writing goal, or any other IEP goals, objectives, related services, SDIs, supplemental aids or services the District is Ordered to pay the Parents' literacy expert to break the tie between the Parties about any disagreement over the goals, the objectives, the related services, the SDIs or supplemental aids or services. If the Parents' literacy expert is unable or unwilling to provide the services, the District at its sole discretion will select and retain another expert to resolve any disagreement(s), as described herein between the Parties. In the event of a disagreement, that the Parties cannot resolve, the District will follow the experts' direction.

14. The expert is not permitted to modify the location of the instruction set forth herein.
15. The IEP goals, objectives, SDIs and the PSBP should be provided to the Student within 30 calendar days of this Order.
16. The District will provide the Parents with progress monitoring reports each quarter consistent with the District's schedule for report cards for nondisabled Students.
17. If the Parties agree in writing the deadlines herein can be extend, however, no extension should be more than 5 school days.
18. No later than April 20, 2017, the District will schedule an IEP meeting to discuss the Student's 5th grade school year.
19. On June 30, 2017, the literacy expert or the replacement expert's participation will end and the requirement for the expert's intervention will expire, unless modified by an Order of Court.

ORDER

And Now, this November 6, 2016, it is hereby **ORDERED** as follows:

Compensatory Education

1. The District should provide the Student with 30 minutes of compensatory education reading instruction for school day of the 2014-2015 school year.
2. The District should provide the Student with 30 minutes of compensatory education writing instruction for school day of the 2015-2016 school year.
3. The reasonable rectification period in this action is 30 hours. The Student's award will be reduced by the 30 hours to reflect the reasonable rectification period.
4. The compensatory education hours Ordered herein should begin as soon as possible and continue, if necessary, after the Student reaches the age of 21.
5. The Parent can select the third-party vendor to provide the compensatory education services.
6. Four times a calendar year, the third-party provider, selected by the Parents, will provide the Parents and the District with a progress report detailing the Student's measurable progress in reading and writing.
7. The District is Ordered to reimburse the Parents' selected vendor for the costs of the compensatory education services provided at the hourly rate charged for the services in the location where the services are provided.
8. The Parents' Section 504 discrimination claim is dismissed.
9. The Parents' ADA discrimination claim is dismissed for lack of subject matter jurisdiction.
10. All other claims not discussed are otherwise dismissed.

[s/ Charles W. Jelley, Esq. LL.M.](#)
Special Education Hearing Officer

November 6, 2016

ORDER
Interim Equitable Prospective Relief

And Now, this November 6, 2016, it is hereby **ORDERED** as follows:

1. The District is Ordered to provide a research based phonetic-based reading program.
2. The District is Ordered to provide a research based writing program.
3. Within 15 calendar days of this Decision, the District will conduct a curriculum-based assessment of the Student's reading skills including but not limited to all five components of reading instruction recognized by the National Reading Panel, (1) phonemic awareness, (2) phonics, (3) fluency, (4) vocabulary, and (5) reading comprehension. As the research-based Foundations reading program is readily available in the District, the District is directed to use the Foundations phonetic reading program as the basis for reading instruction. If Foundations is not available, the District is directed to secure the program and train the staff to implement the reading program as stated herein.
4. Within 15 calendar days of this Decision, the District is Ordered to conduct a curriculum-based assessment of the Student's writing ability.
5. Five school days after the assessments are completed; the District will prepare an IEP with goals, objectives, SDIs, supplemental supports and services in reading and writing. Once the goals, objectives, SDIs, supplemental supports and services are prepared in draft form, the District is directed to provide the draft IEP to the Parents. Five calendar days later, the District and the Parents shall participate in an IEP meeting to review, confer, and revise the Draft IEP.
6. Based on the literacy expert's report, the District will provide the Student with 60 minutes a day of reading instruction. Thirty minutes (30) minutes of instruction will take place, outside of the regular education, in a one-on-one pull-out instructional setting. Based on the literacy expert's report, the District will also provide the Student thirty minutes (30) minutes of reading instruction in the regular education classroom implementing the goals, objectives, SDIs, and supplemental aids and services, with the support of a special education teacher.
7. The District is Ordered to provide the Student with fifteen (15) minutes of one-on-one writing instruction outside of the regular education classroom

- and fifteen (15) minutes of writing instruction in the regular education classroom with supplemental aids, SDIs, and supports.
8. The District is directed to implement the December 2015 PBSP throughout the day.
 9. In addition to the reading and writing instruction, the District should provide thirty (30) minutes of math instruction in the regular education classroom with the support of a special education teacher.
 10. Consistent with the December 2015 IEP, the District will provide one-on-one instructional support from an aide or a special education teacher in all other 4th grade regular education classes along with supplemental aids and services in the LRE.
 11. The District should implement all of the SDIs, accommodations, and modifications found in the December 2015 IEP, including all the 2015 SAS Toolkit SDIs.
 12. All related services listed and provided in the pendent and the December 2015 IEP will be provided in the instructional setting as listed the December 2015 IEP.
 13. In the event the Parties cannot reach an agreement about the reading goal, the math goal, the writing goal, or any other IEP goals, objectives, related services, SDIs, supplemental aids or services the District is Ordered to pay the Parents' literacy expert to break the tie between the Parties about any disagreement over the goals, the objectives, the related services, the SDIs or supplemental aids or services. If the Parents' literacy expert is unable or unwilling to provide the services, the District at its sole discretion will select and retain another expert to resolve any disagreement(s), as described herein between the Parties. In the event of a disagreement, that the Parties cannot resolve, the District will follow the experts' direction.
 14. The expert is not permitted to modify the location of the instruction set forth herein.
 15. The IEP goals, objectives, SDIs and the PSBP should be provided to the Student within 30 calendar days of this Order.
 16. The District will provide the Parents with progress monitoring reports each quarter consistent with the District's schedule for report cards for nondisabled Students.
 17. If the Parties agree in writing the deadlines herein can be extend, however, no extension should be more than 5 school days.
 18. No later than April 20, 2017, the District will schedule an IEP meeting to discuss the Student's 5th grade school year.

19. On June 30, 2017, the literacy expert or the replacement expert's participation will end and the requirement for the expert's intervention will expire, unless modified by an Order of Court.

[s/ Charles W. Jelley, Esq. LL.M.](#)
Special Education Hearing Officer

November 6, 2016