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BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

K. Westray

Kevin Westray, Legal Assistant

Plaintiff,

v.
COBB COUNTY SCHOOL DISTRICT,
Defendant.

:
:
:
: Docket No.:
: OSAH-DOE-SE-1120246-33-Howells
: 11-252084
: 11-241945
:

FINAL DECISION

Plaintiff [redacted], by and through [redacted] parents, filed a due process request pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*, against Defendant Cobb County School District ("Defendant" or "District"). The evidentiary hearing was conducted over six days beginning in August, 2011 and ending on October 28, 2011.¹ Plaintiff's parents appeared *pro se*. Attorney Nina Gupta represented Defendant. For the reasons stated below, Plaintiff's request for relief is **DENIED**.

Procedural Background

Plaintiff [redacted], through [redacted] parent Mr. [redacted], filed his initial due process hearing request on February 2, 2011. Thereafter, the parties participated in a Resolution Session on February 16, 2011, but they were unable to resolve this matter. On March 1, 2011, Plaintiff's parent sought a three month continuance because although the parties had been discussing the possibility of mediation, they had "yet to schedule the mediation." Additionally, Plaintiff's parent sought the continuance because he needed "ample time to interview legal counsel should [they] decide to hire legal counsel for the hearing" in the event the matter was not resolved through mediation.

¹ The record was held open until December 2, 2011, to allow the parties to file proposed Findings of Fact and Conclusions of Law.

The mediation was subsequently scheduled for March 14, 2011. Plaintiff's request for a continuance was granted and the hearing date was rescheduled for May 11, 2011.

The mediation was conducted on March 18, 2011. However, the parties failed to resolve this matter. On April 26, 2011, Plaintiff filed an amended due process complaint ("Amended Complaint"). Defendant consented to the amendment, provided that the applicable timelines to resolve this matter would begin anew. Based on the amendment to the complaint and the resetting of the timelines pursuant to 34 C.F.R. § 300.508(d)(4), the hearing was continued to June 13, 2011.

Plaintiff's Amended Complaint consists of the form Complaint/Request for Due Process Hearing and/or Mediation used by the District, as well as two attachments described as Amendment A and Amendment B. On the form, Plaintiff's parent checked the following boxes to indicate the reasons why he was requesting a due process hearing:

- √ Identification (related to the identification of the child's disability)
- √ Evaluation (process of assessment/testing the child)
- √ Educational Placement (where the child receives IEP services)
- √ Free Appropriate Public Education. There are five (5) common basic principles of FAPE under IDEA:
 - (1) FAPE is available to all children without regard to severity of disability (zero reject principle).
 - (2) FAPE is provided without cost to parents.
 - (3) FAPE consists of individualized programming and related services.
 - (4) FAPE provides an education that is appropriate, but not the best possible.
 - (5) FAPE provided in the least restrictive environment (LRE).

(Amended Complaint, p.1.) In addition to the checked boxes, Plaintiff described the following problem:

[REDACTED] has been a student at Mt. Bethel since kindergarten.

[REDACTED]'s reading has been below grade level since kindergarten. The school system did not provide any advanced testing to determine what was contributing to [REDACTED]'s lack of progress until 3rd grade[,] at which point [REDACTED] was diagnosed with dyslexia. The school system does not have the staff or curriculum to remediate [REDACTED]'s dyslexia.

(Amended Complaint, p.1.) On Amendment A to the Amended Complaint, Plaintiff's parent described an additional problem related to Plaintiff's speech/language disability, as follows:

[Defendant] indicated that their plan for remediation is to pull [REDACTED] out of the General Classroom 2 times a week for 30 minutes for Speech/Language Services. As amended in [REDACTED]'s] IEP on 2/2/11 [REDACTED] is already being pulled out of the General Classroom 5 days a week for both Reading and Language Arts. The cumulative effect of pulling [REDACTED] out of the General Classroom 12 times per week is highly restrictive and therefore inappropriate.

(Amendment A to Amended Complaint.)² Plaintiff's parent described the action that Defendant could take to resolve the problems as follows: "Private school tuition and associated expenses until which time [REDACTED] is capable of re-entering Cobb County Schools." (Amended Complaint, p. 1.)

After multiple motions and continuances, the hearing commenced on August 24, 2011 and ended on October 28, 2011.

Findings of Fact

1.

[REDACTED] is a resident of the District. (D-1, p. 1.) [REDACTED] is a student with a disability within the meaning of IDEA. (D-8, p. 140.) [REDACTED] has been enrolled as a student in the District at Mt. Bethel Elementary School since [REDACTED] kindergarten year (2007-2008). (D-1, pp. 6, 7, 17.) At the end of [REDACTED]'s kindergarten year, [REDACTED] teacher completed a checklist for the Early Intervention Program ("EIP").³ (K-3.) Based on that checklist, [REDACTED]'s teacher determined that [REDACTED] was eligible for EIP services. (*Id.*)

² Consistent with federal regulation, the subject matter of the hearing was limited to the issues raised in Plaintiff's Amended Complaint. 34 C.F.R. § 300.511(d).

³ The EIP program is not a special education service. (TR., p. 198.) Rather, it is a general education program that gives students a "double dose" of academic support in Reading and/or Math. (TR. p. 165.) The need for EIP services, even over an extended period of time, does not indicate the need for special education services. (TR., pp. 198-199.) In fact, students may remain in EIP and never need special education services at all. (TR., p. 199.)

First Grade (2008-2009)

2.

██████ was in first grade for the 2008-2009 school year. Jody Greenwald was ██████'s first grade teacher. (TR., p. 142.) ██████ received EIP services for both Math and Reading in ██████ first grade year. (TR., p. 165, D-2, p. 40-59.)

3.

With those EIP and other general education services, ██████ was "making really good progress and becoming much stronger, much stronger." (TR., p. 165.) When ██████ entered first grade, ██████ was reading at Fountas Pinnell level B. (TR., p. 148, D-2, p. 57.) By the end of the year, ██████ was reading at Fountas Pinnell level G. (TR., p. 169, D-2, p. 57.) Ms. Greenwald considered this to be "great progress" in the area of reading. (TR., p. 170.) Ms. Greenwald further confirmed that ██████ was progressing in reading, progressing through reading levels, and become a much stronger and more confident reader. (TR., p. 186.) Students are not expected to be fluent readers by the end of first grade. At that point, they are still learning to read. (TR., pp. 195-196.) The fact that a student is not a fluent reader in first grade does not suggest a disability. (TR., p. 196.)

4.

The District uses standards-based report cards for elementary age students, on which students receive number grades, rather than traditional letter grades. A "1" indicates that a student is making limited progress towards mastering standards. A "2" indicates that a student is making good progress towards mastering standards. A "3" indicates that a student has fully mastered the standards. A "3" is essentially equivalent to earning 100%. It indicates total mastery with no errors. (TR., pp. 190-191.) In contrast, a "2" could indicate a score of 80%, which would be equivalent to a letter grade of "B." (TR., pp. 195-195.) Further, each nine-week

grading period reflects instruction of different material. (TR., pp. 186, 196.) Therefore, if a student earned a "3" in a particular area in the first nine-week grading period, but earned a "2" in that same area in the second nine-week period, it does not mean that he has regressed. (TR., pp. 166-67, 213.) Rather, it simply means that the student learned less of the new material. (TR., p. 196.) By the end of [REDACTED] first grade year, [REDACTED] had earned a "2" or "3" in every area. (D-1, p. 18.)

5.

Near the end of [REDACTED] first grade year, [REDACTED] took the Criterion-Referenced Competency Test ("CRCT"), an assessment mandated by the State of Georgia. [REDACTED] exceeded expectations in the area of Reading and Math and met expectations in English/Language Arts, the three areas tested in first grade. (D-1, pp. 8-9) The State of Georgia determines what level of mastery constitutes a score of "exceeds expectations," "meets expectations," and "does not meet expectations." (TR., p. 258.) If a student "meets expectations," then the student has met State-mandated expectations for that academic area.

6.

Because [REDACTED] made progress while in first grade, Ms. Greenwald did not see a need to refer [REDACTED] for special education services. (TR., p. 199.) In fact, nothing about [REDACTED]'s performance during that year led Ms. Greenwald to suspect that [REDACTED] might have a disability.

(Id.)

Second grade (2009-2010)

7.

Ms. Toni Hillegas was [REDACTED]'s second grade teacher. (TR., p. 205.) While in second grade, [REDACTED] continued to receive EIP services for both reading and math. (D-2, pp. 60-75.) [REDACTED] made significant progress in math that year. For example, in the Fall of 2009 [REDACTED] mastered 38 math addition facts, but in the Spring of 2010 [REDACTED] mastered 83 math addition facts. Similarly, [REDACTED]

mastered 2 math subtraction facts in the Fall of 2009, and 54 math subtraction facts in the Spring of 2010. (D-2, p. 67.)

8.

In contrast, although [REDACTED] was making some progress in reading, Ms. Hillegas became concerned about the pace of [REDACTED] progress. In her opinion, [REDACTED] was "not making progress fast enough." (TR., pp. 225-226.) Specifically, she noted that [REDACTED] often remained on the same reading level when other children in the reading group were advancing. (TR., p. 226.)

9.

During a January 28, 2010 parent-teacher conference with Mrs. [REDACTED] Ms. Hillegas noted that [REDACTED] had made little progress in reading. (T-17.) On March 3, 2010, Ms. Hillegas formally placed [REDACTED] on Tier 2 of the Response to Intervention ("RTI") process. (TR., p. 225.) She informed Mrs. [REDACTED] of the same via a telephone conference. (TR. p. 225.)

10.

RTI is a tiered process designed to provide additional assistance to students in a particular area. It is a general education process. (TR., p. 1287.) All students are on Tier 1 of the RTI process, as it simply describes everyday general education instruction. (TR., p. 255.) If students struggle in Tier 1, they are moved onto Tier 2, which may involve some targeted instruction, such as working in occasional small groups within a larger general education classroom setting. (TR., p. 255.)

11.

Students remain on Tier 2 for a minimum of six weeks. (TR., p. 234.) If they continue to respond to the interventions used on Tier 2, they may remain on that tier even longer. (TR., p. 234.) If Tier 2 strategies result in unsatisfactory progress, students are moved on to Tier 3, through which students may receive even more targeted instruction, such as occasional one-on-

one instruction and assistance within a general education classroom (TR., p. 256.) Students on Tier 3 of RTI who make insufficient progress will be moved to Tier 4, which is a referral for a special education evaluation. RTI is a general education intervention; it is not special education. (TR., p. 256.) Interventions that may be used through the RTI process are selected by teachers, based on their expertise and their knowledge of their students. (TR., p. 257.)

12.

██████ was placed on Tier 2 in March 2010. Ms. Hillegas used specific strategies for ██████; some were successful for ██████ and others were not. (TR., pp. 236-237; D-3, p. 81-95.) Near the end of the year, ██████ had shown some progress and moved up a reading level to Fountas Pinnell level H, but Ms. Hillegas believed that more intensive interventions were required and in April of 2010 recommended that ██████ be moved to Tier 3 of the RTI process.⁴ (D-2, p. 67; D-3, pp. 95; TR., p. 256.) Despite ██████ slow progress in the classroom, ██████ once again met expectations on the CRCT in both Reading and English/Language Arts and exceeded expectations in Math. (D-1, pp. 10-11.) He took the CRCT with no accommodations. (TR., p. 258.)

Third Grade (2010-2011)

13.

Michelle Boutwell was ██████'s third grade teacher. (TR., p. 851.) During that year, ██████ continued to receive EIP services for Reading with Jessica Snow. However, by that time, EIP services for Math were discontinued, as ██████ no longer required them. (See D-2, p. 80.)

14.

At the beginning of ██████'s third grade year, Ms. Boutwell conferred with Ms. Hillegas, his previous teacher, to discuss appropriate strategies for ██████ (TR., p. 860.) Ms. Boutwell

⁴ Because there was less than six weeks remaining in the school year, ██████ could not officially be moved to Tier 3. (TR., pp. 242-245.)

officially moved [REDACTED] on to Tier 3 of the RTI process early in the school year. (TR., p. 871.) After reading with [REDACTED], Ms. Boutwell was aware that [REDACTED] reading level was low. Although she did not know whether [REDACTED] had a learning disability, she suspected one might be present. (TR., p. 864.) Consequently, she contacted [REDACTED]'s parent around August 19, 2010, to discuss her concerns regarding [REDACTED]'s reading. (TR., p. 865; MB-8.) Ms. Boutwell asked Plaintiff's parent to complete a parent questionnaire regarding her concerns. The only concern Mrs. [REDACTED] noted was [REDACTED]'s "reading ability." (D-5.)

15.

Additionally, Ms. Boutwell began implementing Tier 3 of the RTI process for [REDACTED] (TR., pp. 871, 899; D-3, pp. 92-107.) The RTI process is required prior to any determination that a student is eligible for special education services under the category of Specific Learning Disability ("SLD"). (TR., pp. 899-900.)

16.

Because [REDACTED] did not respond adequately to the RTI process, Ms. Boutwell referred [REDACTED] for an evaluation to determine whether he required special education services. (TR., p. 900.)

17.

Also while in third grade, [REDACTED]'s parents sought out Maureen Mullins, another teacher at Mt. Bethel Elementary School, and a former Teacher of the Year, to provide tutoring to [REDACTED] (TR., p. 260.) Ms. Mullins had previously tutored their older daughter. (TR., p. 260.) She tutored [REDACTED] in reading during the first few months of [REDACTED] third grade year. (TR., p. 281.) Although Ms. Mullins saw that [REDACTED] struggled with reading, she saw no "red flags" that suggested [REDACTED] had a disability. (TR., p. 282.)

18.

Ms. Mullins also offered after-school tutoring for third grade students prior the CRCT. This tutoring was offered for a total of approximately 17 one-hour sessions from January to March 2011. The sessions were small groups of approximately four students. (TR., pp. 264-266.) [REDACTED] attended only four or five of these sessions. (TR., p. 282.)

19.

India Bennett was [REDACTED]'s third grade Social Studies teacher. (TR., p. 361.) Ms. Bennett was asked by Ms. Boutwell to "keep an eye" on [REDACTED] at the beginning of the school year, as she had seen some concerns and because [REDACTED] was on Tier 3 of the RTI process. (TR., p. 362.) Once [REDACTED] was made eligible for special education services in November 2010, Ms. Boutwell shared the relevant portions of his IEP with Ms. Bennett. (TR., pp. 362-365.)

20.

On or about September 8, 2010, the District requested Plaintiff's parent's permission to evaluate [REDACTED] for eligibility for special education services. Plaintiff's parent provided his consent to do so. (D-6, pp. 125-126.)

Psychoeducational Evaluation

21.

The District administered a psychoeducational evaluation for [REDACTED] in October 2010, to assist in determining whether [REDACTED] was eligible for special education services. Specifically, the only concern noted in the referral was difficulty with reading. (TR., p. 38.)

22.

Dr. Vicki Bunke, a school psychologist, administered the evaluation. (TR., p. 19; D-6.) Dr. Bunke was qualified to administer all tests that she used. She used the most recent version of

each test, administered each test in [REDACTED]'s primary language, used each test for the purpose it was created, and administered each test according to testing protocols. (TR., pp. 58-59.)

23.

Given [REDACTED]'s overall performance and behaviors during the evaluation sessions, the results were a valid estimate of his functioning at that time. As part of the evaluation, Dr. Bunke administered a test of intellectual functioning, which found [REDACTED] to have average cognitive abilities (i.e., average intelligence). (D-6, p. 119.)

24.

She also administered tests of academic achievement. [REDACTED] was found to have academic achievement commensurate with [REDACTED] cognitive abilities in all areas except for reading decoding, comprehension, and reading fluency. (D-6, p. 120.)

25.

Interestingly, while [REDACTED] showed trouble with reading, [REDACTED] showed no difficulties with written expression. This phenomenon is not uncommon. Similarly, [REDACTED] had difficulty with decoding words, but [REDACTED] showed no difficulty when planning and organizing thoughts, coming up with ideas for writing, or actually executing written output at a high level. (TR., p. 63-64.)

26.

[REDACTED]'s rapid naming skills were commensurate with [REDACTED] cognitive ability; however, [REDACTED] phonological awareness skills were lower than expected. [REDACTED] scaled score on the Blending Words subtest (a test that measures a student's ability to blend words together, such as "pop" and "corn") of the Comprehensive Test of Phonological Processing ("CTOPP") was a 7. [REDACTED] scaled score on the Elision subtest (which measures a student's ability to take words apart, such as saying "popcorn" without saying "pop") was a 5. (D-6, p. 121.) Scaled scores of 7 to 13 are considered average. (TR., p. 65.)

Throughout the hearing, Plaintiff's parent took issue with a portion of Dr. Bunke's report, in which she stated that "[REDACTED] is at risk for the development of [d]yslexia." Dr. Bunke's role, as a school psychologist, is to "document processing deficits that manifest themselves in academic underachievement." (TR., p. 37.) It is not part of her job to give clinical diagnoses. (TR., pp. 31, 37.) Dr. Bunke acknowledges that [REDACTED] has a profile that is "consistent with dyslexia." She refrained from stating that [REDACTED] has dyslexia, because it is not her job to provide the school or parents with a clinical diagnosis. (TR., p. 38.) In other words, her use of the language "[REDACTED] is at risk for the development of" was merely her way to avoid giving a clinical diagnosis. (TR., pp. 31-41) (emphasis added).⁵

Furthermore, a clinical diagnosis of dyslexia does not automatically make a child eligible for special education services. (TR., pp. 43, 55-56, 342.) Similarly, a special education eligibility category does not determine what special education services a student will receive. Rather, the needs of the student, regardless of eligibility category influence the services the student receives. (TR., p. 690.)

In her report, Dr. Bunke made several recommendations to [REDACTED]'s parents regarding community resources. (TR., pp. 44-50; D-6, p. 124.) While she did not believe such resources were necessary to provide [REDACTED] with a free appropriate public education, she wanted to provide help to the family. (TR., pp. 55-56.)

⁵ Certainly, Dr. Bunke could have written her report using only the vernacular of IDEA, and avoided the word "dyslexia" entirely. She did not do this because she is aware that there is a significant amount of reference literature on the topic of dyslexia, and she wanted to provide the family with information and direct them to some available resources. (TR., p. 42.)

30.

Throughout her evaluation, Dr. Bunke informally assessed [REDACTED]'s speech and language. She did not note any concerns. Nor was there any indication from [REDACTED]'s parents that they had concerns about [REDACTED]'s speech or language. (TR., p. 21.) The only concern listed by [REDACTED]'s parents was [REDACTED]'s "reading ability." (D-5, p. 110.)

31.

Based on the results of her evaluation, Dr. Bunke recommended that an IEP team consider [REDACTED] for IDEA eligibility in the area of Specific Learning Disability, specifically in the area of Reading. (D-6, p. 123.) Dr. Bunke mailed her report to [REDACTED]'s parents on October 19, 2010, along with a cover letter inviting [REDACTED] parents to meet with her to discuss the results. (D-6.)

November 2010 IEP meeting

32.

On November 11, 2011, the District convened a meeting to review Dr. Bunke's evaluation, to determine whether [REDACTED] was eligible for special education services, and to develop an Individual Education Program ("IEP") for [REDACTED]. Plaintiff's parents received notice of, attended, and participated this meeting. (D-8.) The IEP committee agreed that, based on the information available to it, [REDACTED] met criteria for eligibility under the category of Specific Learning Disability, specifically in the area of reading. Plaintiff's parents both agreed with this determination. (D-7.)

33.

The IEP team then developed goals and objectives designed to address [REDACTED]'s areas of weakness. Goals and objectives are not restatements of the curriculum. Likewise, they should not focus on a student's performance on a specific test. Rather, they are intended to target a

student's individual needs. (TR., pp. 982, 1215-1216.) Ultimately, Plaintiff's parents consented to this placement. (D-9.)

34.

From the beginning of the November 2010 IEP meeting, Plaintiff's parents requested that the District pay for private services. (TR., p. 637.) Based upon the information available to it, the IEP team determined that [REDACTED] should be placed in a small group special education class for Reading for 60 minutes per day. [REDACTED] would remain in the general education class for all other subjects. (D-8.)

Ms. Ronemous's Class

35.

The IEP meeting was held on November 11, 2010, a Thursday. [REDACTED] began receiving special education services for Reading the following Monday, November 15, 2010. (TR., pp. 978-979.) [REDACTED] was assigned to special education teacher Hanna Ronemous. (TR., pp. 977-978.) Ms. Ronemous earned her Bachelor of Science degree in Early Childhood Education in 2001. She completed her master's degree in Special Education in 2005. (D-26, p. 259.) She is certified with the state as a special education teacher in the areas of general curriculum, language arts cognitive level, reading cognitive level, math cognitive level, science cognitive level, and social studies cognitive level. (H-1.)

36.

In addition to Ms. Ronemous, Jennifer Sigmund, a paraprofessional, was present in the class to provide additional support and reinforce material introduced by Ms. Ronemous.⁶ Ms. Sigmund worked under Ms. Ronemous's supervision and did not implement curriculum or

⁶ Ms. Sigmund is a certified paraprofessional. (JSig-1.) She has a bachelor's degree in psychology and, as of the date of the hearing, she was working on a master's degree in education with an emphasis on special education in the area of early childhood education. (TR., pp. 470-71.)

present new material. (TR., pp. 455-456.) There were four students, including [REDACTED] in this small group Reading class. (TR., p. 983.)

37.

Ms. Ronemous used, in part, the Foundations program to help instruct students, including [REDACTED], in her small group Reading class. (TR., pp. 482-485.) Foundations is a specific program or product that is based on the Orton-Gillingham methodology. (TR., pp. 348-49.) Foundations is published by the same company that publishes the Wilson Reading System. (TR., p. 349, 355.) Foundations uses the "exact same methodology" used in other Wilson programs, such as Wilson "Language!". (TR., pp. 1003, 1330-1331.)

38.

Methodologies are distinct from curriculum, as curriculum is the actual content that students learn. Generally, specific methodologies are not part of an IEP, for very good reason. A teacher must have the discretion, based upon her expertise, to select appropriate methodologies and materials for students. If a teacher finds many products or methodologies that are effective in teaching a student, she must be free to use them to meet the student's educational need. (TR., pp. 1216-1217.)

39.

Ms. Ronemous received training in the Foundations program through a Wilson-trained instructor. (TR., p. 482.) Foundations does not require any separate certification for implementation. (TR., p. 482.) In fact, the Wilson Reading System does not require any certification for implementation. (TR., p. 688.) Foundations is appropriate for use for students in kindergarten through third grade who are in the lowest 30th percentile of reading achievement. (TR., p. 492.) At the time [REDACTED] was in Ms. Ronemous's class, [REDACTED] was a third grade student who was in the lowest 30th percentile of reading achievement. (TR., pp. 493, 992.)

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The District uses the Georgia Performance Standards as its curriculum (i.e., the substantive content taught to the students). However, it uses different products and methodologies, such as Foundations or Language! to implement that curriculum. (TR., pp. 1002-1003, 1213.) Foundations is a multi-sensory, sequential, and cumulative approach that explicitly teaches reading skills. (TR., p. 984, 992-93.) It is specifically geared towards elementary-age students, like [REDACTED], who have difficulty with reading. (TR., p. 984.)

For students like [REDACTED], the Wilson company recommends implementing Foundations for 40 to 60 minutes per day, which is what Ms. Ronemous did. (TR. pp. 497-498.) In addition, [REDACTED] received 60 minutes per day of literature-based instruction in [REDACTED] Language Arts class; first with Ms. Boutwell and then with Ms. Ronemous when [REDACTED] was moved to a small group special education Language Arts class. (TR., pp. 1011-1012.) This amount of instruction actually exceeds what the Wilson company recommends as minimum levels of instruction for students with language-based learning disabilities. (TR., pp. 1038-1042, 1049-1050.) In addition to in-class work, Ms. Ronemous sent home additional reinforcement activities and other materials to help inform [REDACTED] parents and give them opportunities to reinforce [REDACTED] progress. (TR., p. 499.)

[REDACTED] was placed on Level 2 in the Foundations program when [REDACTED] arrived in Ms. Ronemous's class. Ms. Ronemous started [REDACTED] at that level based upon the placement assessment that she conducted. (TR., pp. 498, 993-94.) It would have been inappropriate to start [REDACTED] at a higher level, as [REDACTED] would have missed the foundational skills that [REDACTED] required. (TR., pp. 993-994.) Ms. Ronemous began using the Foundations program as soon as [REDACTED] entered her class. (TR., p. 994.) Ms. Ronemous noted, though, that an educator's discretion is important when

determining what methods to use in teaching students. (TR., p. 1012.) Accordingly, while Foundations is a methodology that the District uses to implement reading instruction for students with difficulties, teachers may use their discretion to use other methodologies and products if they believe that other interventions are required. (TR., pp. 1015-1016.) Plaintiff's witnesses, Jean DeRosa and Joan Gerken, also agreed that this type of discretion is important. (TR., pp. 1384, 1490-1491.)

43.

Initially, [REDACTED] was a bit shy in [REDACTED] small group Reading class. However, once [REDACTED] became familiar with the class rules and routines, [REDACTED] was an active participant. [REDACTED] readily volunteered and was prepared for [REDACTED] lessons. (TR., p. 985.) Ms. Ronemous did not believe that [REDACTED] required one-on-one tutoring. (TR., p. 504.)

February 2011 IEP meeting

44.

The District convened another IEP meeting on February 2, 2011, at Plaintiff's parent's request. (D-10.) Prior to that, Mr. [REDACTED]'s father, had already notified the District that he had decided that [REDACTED] would attend a private school, regardless of any information that might be shared at the IEP meeting. (D-27, p. 293.) By the time of this meeting, [REDACTED] had been receiving special education services with Ms. Ronemous for approximately three months. Ms. Boutwell, who had returned from her maternity leave and attended this meeting, could already see improvement in [REDACTED]'s academic performance. (TR., p. 908.)

45.

Plaintiff's parents attended this meeting with Ms. DeRosa, their private tutor, and Dr. Kelle Laushey, a family friend. From the beginning of the meeting, Ms. DeRosa was adamant

that District staff was not qualified and that the District needed to use the Wilson Reading System.⁷ (TR., p. 639.)

46.

Based upon comments and suggestions made by Plaintiff's parents and their invited guests, the IEP team revised some of [REDACTED]'s goals and objectives. (D-10, p. 155.) It is not unusual for an IEP team to address and revise goals during the course of a school year, even if the IEP has not yet expired. (TR., p. 640.)

47.

In addition, Plaintiff's parents and invited guests sought additional support for [REDACTED] during the school day. (TR., pp. 642-643, 908.) The educators working with [REDACTED] did not see an explicit need for additional support. However, [REDACTED]'s parents and their invited participants were adamant that additional support be added. In an effort to be collaborative, the IEP committee agreed to provide that support. (TR., pp. 73, 418-421, 985; D-10, pp. 157-158.) In fact, the IEP team offered even more assistance, offering to place [REDACTED] in co-taught classes, but [REDACTED] parents declined, stating that they did not want to disrupt [REDACTED] schedule. (TR., pp. 641-642, 909.) Accordingly, as of the February IEP meeting, [REDACTED] received two hours every school day of small group special education instruction in the areas of Reading and Language Arts. (D-10, pp. 158-159.)

48.

Ms. DeRosa also asked the District to conduct a speech-language evaluation. Prior to the February 2011 IEP meeting, none of [REDACTED]'s teachers (or anyone else) expressed any concern or suspected that [REDACTED] might have a speech-language impairment. If they had, they would have

⁷ Ms. DeRosa is a paid consultant for the Wilson company, which is a for-profit corporation that creates commercial products. (TR., pp. 1326-27, 1384.)

referred █████ for an evaluation in that area. (TR., pp. 375, 867, 904-905, 988-989.) Although the District did not see speech-language needs, a referral was made in an effort to be cooperative and seek additional information. (TR., p. 909.)

49.

Denise Pennington, a speech-language pathologist, conducted the speech-language evaluation for █████ (TR., p. 1065; D-11.) It was "absolutely not" evident to Ms. Pennington that █████ had any speech-language issues. (TR., p. 1067.) Rather, she had to "do some digging" to find issues, as █████'s overall core language scores were all in the average range. (TR., p. 1067; D-11.) Although █████ did have some minor articulation errors that are to be expected, given █████ age and developmental norms, █████ speech was 100% intelligible. (TR., pp. 1079, 1088-1089; D-11, p. 162.) In Ms. Pennington's opinion, █████'s academics were not being adversely impacted by any speech-language concerns. (TR., p. 1069.) Overall, Ms. Pennington described █████ as "consistently inconsistent," with a pattern of relative strengths and weaknesses. (TR., p. 1075.) Ms. Pennington had no reason to believe that █████ required speech-language services any time prior to the evaluation that she conducted. (TR., p. 1088.)

April 2011 IEP meeting

50.

On April 14, 2011, the District convened an IEP meeting to discuss the results of the speech-language evaluation and revise █████'s IEP accordingly. (D-13.) Mr. █████ received notice of, attended, and participated in this IEP meeting. At this IEP meeting, the team determined that █████ should receive speech-language services. (D-12; D-13.) The IEP team drafted some goals and objectives regarding speech-language and recommended that █████ receive weekly small group speech therapy. (D-13, pp. 188-89, 192.)

Although [REDACTED] was eventually found eligible for speech-language services, Ms. Pennington opined that a determination of ineligibility was equally plausible and defensible, given the results of her evaluation. Nevertheless, the team chose to err on the side of caution and provide services, as [REDACTED] did have some relative weaknesses, despite the fact that [REDACTED] overall scores were in the average range. (TR., p. 1081.)

Speech Language Services

Faith Harmeyer, a speech-language pathologist, began providing [REDACTED] with individual speech-language therapy following the April 2011 IEP meeting. (TR., pp. 1092, 1107.) Like Ms. Pennington, Ms. Harmeyer believed [REDACTED] to be a "borderline" case for speech-language therapy. (TR., pp. 1095-1096.) Also like Ms. Pennington, Ms. Harmeyer felt a case could be made that [REDACTED] required no speech-language therapy at all. (TR., pp. 1112-1113.) In fact, the IEP team had to "stretch" to find speech-language goals for [REDACTED] to work on, given his strengths. (TR., pp. 1095-1096.)

Ms. Harmeyer pulled [REDACTED] from [REDACTED] Science class for 30 minutes per week and [REDACTED] Social Studies class for 30 minutes per week for their therapy sessions. Accordingly, [REDACTED] did not miss any special education instruction with Ms. Ronemous. (TR., pp. 1108-1109.) Ms. Harmeyer worked with Ms. Boutwell to ensure that any content [REDACTED] missed from [REDACTED] Science or Social Studies class was redelivered to [REDACTED] (TR., p. 1109.) The nature of the therapy sessions prevented them from being delivered in the general education classes. In other words, the specificity of [REDACTED]'s goals required that the sessions be conducted one-on-one. (TR., pp. 1106-07.) [REDACTED] made excellent progress with Ms. Harmeyer during their sessions. (TR., pp. 1097,

1112, 1119.) Mr. [REDACTED] acknowledged that Ms. Harmeyer did an "excellent job" with [REDACTED] (TR., p. 1107.)

54.

At the April 2011 meeting, the IEP committee also recommended Extended School Year ("ESY") services for [REDACTED], to be provided in the areas of Reading, Language Arts, and Speech-Language during the Summer of 2011. (D-13, pp. 186-187.) The IEP committee added these services because they felt that [REDACTED] was at a critical point of instruction. [REDACTED] had been "progressing really well," was "grasping a lot of information," and the team did not want [REDACTED] to go through a long summer break without continuing instruction and possibly lose what [REDACTED] had gained. (TR., pp. 989-90.)

55.

Ms. Harmeyer suggested ESY services for Speech-Language services, because she had only seen [REDACTED] for a short time. Additionally, she felt [REDACTED] was making "great progress" and wanted to keep that momentum going. (TR., p. 1119.)

56.

[REDACTED] never attended any of the ESY services offered by the District. (TR., p. 990.) Ms. Ronemus personally contacted Mr. [REDACTED] to determine whether they would send [REDACTED] for ESY services, and Mr. [REDACTED] declined. (TR., p. 990.) During the April 2011 IEP meeting, Mr. [REDACTED] main concern regarding ESY services was that the District could not tell him who [REDACTED]'s teacher would be. (TR., p. 1189.)

Independent Educational Evaluation

57.

Plaintiff's parent requested an independent educational evaluation ("IEE") in response to the psychoeducational evaluation conducted by Dr. Bunke. The District granted this request.

(D-28, p. 309.) Dr. Kelly Montiel, Plaintiff's chosen evaluator, conducted this evaluation in April 2011, after [REDACTED] had been receiving special education services through the District for approximately five months. (KM-3.)

58.

Dr. Montiel's conclusions were essentially identical to what the District had already determined – that [REDACTED] may be eligible for special education services due to a learning disability in the area of reading. (TR., p. 74; KM-3.) However, instead of making recommendations regarding eligibility under IDEA, Dr. Montiel stated that [REDACTED] met criteria for a “diagnosis” of a “Specific Learning Disability in basic reading, or dyslexia (Reading Disorder).” (KM-3.)

59.

Dr. Montiel acknowledged that there is a difference between eligibility criteria for special education services under IDEA and a clinical diagnosis. She further acknowledged that the two concepts do not necessarily overlap. For example, a student may have a diagnosis of dyslexia but not qualify for special education services, and vice versa. (TR., p. 135.)

60.

While Dr. Montiel's conclusions were essentially identical to the District's, her evaluation indicated that [REDACTED] had made progress in virtually every area, as compared to [REDACTED] previous evaluation in October 2010, as described in the chart below. In fact, almost all of [REDACTED] academic achievement scores were in the “average” range by April 2011, when they had been in the below average or deficient range in October 2010. In some areas, [REDACTED] actually scored in the high average or superior range. (D-6; KM-3.)

	October 2010 (Bunke Report)	April 2011 (Montiel Report)
Reading Comprehension	73 (WIAT-III)	85 (WIAT-III)

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		90 (WJ-III)
Reading Fluency/Word Reading	75 (WIAT-III)	80 (WIAT-III) 88 (WJ-III)
Written Expression	106 (WIAT-III)	114 (TOWL-4)
Mathematics	99 (WIAT-III Numerical Operations) 100 (WIAT-III Math Problem Solving)	123 (WJ-III Calculation) 106 (WJ-III Applied Problems)
Spelling		89 (WIAT-III)
Elision/Auditory Processing	5 (CTOPP)	9 (CTOPP)
Blending Words	7 (CTOPP)	8 (CTOPP)
Phonological Awareness		91 (CTOPP)
Visual-Motor Integration	83 (VMI)	121 (Bender Gestalt II)

61.

Especially important was [redacted]'s progress in the area of reading comprehension. In October 2010, [redacted] scores were below the average range. By April 2011, however, they were within the average range on two separate tests, as were [redacted] scores in reading fluency. Students cannot effectively comprehend if they have poor reading fluency. Reading fluency greatly impacts comprehension, as does reading decoding. (TR., p. 90.)

62.

Dr. Montiel made recommendations, many of which the District was already implementing. Dr. Montiel recommended that [redacted] receive an intensive multi-sensory instructional program in order to benefit academically; she recommended that [redacted] continue with the speech-language services the District was already providing [redacted], and she made some recommendations for accommodations. (TR, p. 137; KM-3.) Dr. Montiel made clear, however, that these recommendations for accommodations were not all necessary for [redacted]; rather, they were simply a "list of suggestions" to consider. (TR., p. 138.)

August 2011 IEP meeting

63.

The District convened an IEP meeting in August 2011 to review Dr. Montiel's report, as well as to revisit [REDACTED]'s placement for the upcoming year. Plaintiff's father received notice of, attended, and participated in this meeting. (D-14.) The IEP team noted that Dr. Montiel's recommendations were very similar to what the District had already implemented. (TR., p. 913.)

64.

The IEP team also determined that [REDACTED]'s placement for [REDACTED] fourth grade year (the 2011-2012 year) should change to include not only small group instruction for Reading and Language Arts, but also co-taught instruction for Science and Social Studies, due to the more complex content that [REDACTED] would encounter. (TR., pp. 913-914; D-14, pp. 207-209.) The IEP committee discussed that, because in the fourth grade these subjects rely more heavily on textbooks and more independent reading, a higher level of support would be appropriate. (TR., pp. 74-75.) Co-taught classrooms are general education classrooms that are taught by both a regular education teacher and a special education teacher, with a mixture of general education and special education students. (TR., pp. 74-75, 1218-1219.) Thus, in these classes, special education students are taught alongside their nondisabled peers.

S.M.'s Progress

65.

The record contains ample examples of the progress that [REDACTED] made while enrolled in the District. In addition to meeting or exceeding expectations in all areas of the CRCT in first and second grade, [REDACTED] met or exceeded expectations on all portions of the CRCT in [REDACTED] third grade year. (D-1, pp. 8-13.) [REDACTED] actually exceeded expectations in the areas of math and science. (*Id.* at 12-13.)

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The CRCT is the state-mandated standard assessment that most third grade students in Georgia take. (TR., p. 1004.) There are alternative assessments, such as the CRCT-M for those students who may struggle with the standard CRCT, and the Georgia Alternative Assessment ("GAA"), for students whose disabilities are so significant that they are not expected to master grade-level content at all. (TR., p. 1005.) [REDACTED] took the standard CRCT. (*Id.*) [REDACTED] did not require an alternative assessment. (*Id.*)

Passing the CRCT in the third grade year requires mastery of a higher level of knowledge and skill than in the first or second grade years. (TR., p. 285.) The third grade CRCT is reflective of the level of academic mastery that the State of Georgia expects for all third grade students. (TR., p. 1006.)

During the Reading portion of the third grade CRCT, [REDACTED] was required to read the passages independently. However, the questions and answers were read to [REDACTED] (TR., pp. 1005-06.) This was an accommodation agreed to by [REDACTED] IEP team.⁸ (D-10, p. 157.) Notwithstanding the accommodation, [REDACTED] could not have answered the questions correctly, if [REDACTED] was not able to adequately and independently read the passages. (TR., pp. 285-286.)

Various classroom assessments also indicate that [REDACTED] made academic progress. For example, in December 2010, [REDACTED]'s reading fluency as measured by classroom assessments was approximately 29 words per minute. (TR., pp. 525-526; H-4.) In early March 2011, [REDACTED]'s

⁸ There is a difference between a modification and an accommodation when taking the CRCT. A modification means that the test itself or the content has been modified. Whereas, an accommodation is simply a change in the test taking procedure. (See TR., pp. 1004-05.)

reading fluency was approximately 75 words per minute. An assessment conducted in late April 2011, indicated that [REDACTED]'s reading fluency had increased to approximately 125 words per minute. (TR., pp. 473-474; H-17.)

70.

In fact, Ms. Ronemous, [REDACTED]'s special education teacher, specifically noted good progress, based on her observations while teaching [REDACTED]. When [REDACTED] first came to her class in November 2010, [REDACTED] would have to sound out each individual word [REDACTED] was reading. By the end of the year, [REDACTED] was reading much more fluently. (TR., p. 601.)

71.

[REDACTED]'s reading level had also greatly improved. As measured by the STAR reading inventory, in August 2010, [REDACTED] was reading at a grade equivalent of 1.7. By May 2011, less than one year later, [REDACTED] was reading at a grade equivalent of 2.7. In fact, on one administration of the test, on May 11, 2011, [REDACTED] grade equivalent level was at a 3.0. (D-21, pp. 233-235.)

72.

Assessments given through the Foundations program also showed progress, as shown on this chart. (H-19.) In every area, [REDACTED] improved his performance.

	March 30, 2011	May 9, 2011
Real Words (number correct)	8	9
Phrases (number correct)	42	56
Sounds (number correct)	15	18
Trick Words (number correct)	14	17

Similarly, █████ showed excellent progress in reading as measured by the Scholastic Reading Inventory ("SRI") test of reading skills. In September 2010, █████'s reading level was at a Lexile of BR⁹, far below grade level and considered "below basic" for grade level performance standards. (TR., pp. 794-95.) In January of 2011, █████ received a Lexile score of 395. By May 12, 2011, however, █████ Lexile was at 579, which is considered "on" grade level and "proficient" for grade level performance standards. (D-22.) For these tests, █████ was required to read everything independently and without any assistance. (TR., p. 986.)

As noted above, █████'s performance on psychoeducational testing also shows progress. The independent evaluation conducted by Plaintiff's unilaterally-selected evaluator in April 2011 showed that █████ had made progress in virtually every area, as compared to █████ previous evaluation in October 2010. (See chart *supra* at ¶ 60; see also D-6; KM-3.)

█████'s performance on █████ IEP goals and objectives also shows that █████ made progress. █████ mastered or made significant progress on the majority of █████ goals and objectives, as shown on the below chart. (D-16; D-17; D-18; D-19.) The chart reflects the date the goal/objective was begun (November 2010, February 2011, or April 2011), the substance of the goal/objective, and █████'s performance.

Goal	Short Term Objective	December 2010 Progress Report	March 2011 Progress Report	May 2011 Progress Report
Grammar – Identify parts of				

⁹ "BR" stands for beginning reader. (TR., p. 218.)

<i>speech (begun 11/10, with mastery level of 70%)</i>				90% (mastered)
	Applying correct verb tense (mastery level of 70%)			
<i>Writing – Demonstrate effective basic writing (begun 11/10, with mastery level of 70%)</i>				
	Write for a variety of purposes:			-78% (mastered)
	-Persuasive			Not yet introduced
	-Response to Literature			
	-Informational	-88% (mastered)		Not yet introduced
	-Personal Narrative			
<i>Speech/articulation – produce /th/ and /s/ sound (begun 4/11)</i>				
	Initial position (mastery level of 90%)			95% for /th/ 100% for /s/ (mastered)
	Medial position (mastery level of 75%)			90% for /th/ 100% for /s/ (mastered)
	In phrases/sentences (mastery level of 70%)			95% for /th/ 100% for /s/ (mastered)
	In structured conversation (70%)			Not yet introduced
	In all situations (60%)			Not yet introduced
<i>Speech – expressive/receptive language – improve sentence structure and grammar (begun 4/11)</i>				
	Use regular and irregular plurals in words/sentences (mastery level of 60%)			50% for regular plurals 70% for irregular plurals (progressing)
<i>Speech – orally</i>				

<i>retell narrative (begun 4/11)</i>				Not yet introduced
	Expand sentences with cohesive ties to show direct consequences (mastery level of 60%)			
	Use icons as tool to sequence and retell narrative (mastery level of 70%)			80% for character/setting; overall data 5% (all icons not yet introduced)
<i>Phonemic Awareness – demonstrate ability to identify and orally manipulate word and sounds (11/10)</i>				
	Blend sounds to form words (mastery level of 70%)	Practicing	Good with 2 letter blends, needs help with 3 letter blends	80% (mastered)
	Blend multi-syllable words (mastery level of 70%)	Practicing	Focusing on blending 1-syllable words	80% (mastered)
	Apply sounds, words, sentences in written form (begun 2/11, 60%)			Not yet introduced
<i>Reading comprehension – demonstrate ability to sequence information (begun 4/11)</i>				
	Sequence information from narrative and informational texts (mastery level of 70%)			100% (mastered)
<i>Answer questions about instructional level passage (begun 11/10)</i>				
	Literal questions (mastery level of 80%)	Level 2, 80%	Level 2, 80%	Level 2, 80% (mastered) GE from 1.7 to 2.7 on STAR; On SRI, from BR to on grade level

	Inferential questions (mastery level of 70%)	Level 2, 40% DRA Level I	Level 2, 40% DRA Level I	Level 2, 40% DRA Level K
<i>Reading fluency -- read orally with speed, accuracy and expression on grade level passage (begun 11/10)</i>				
	Read passage on instruction level (with 80% accuracy)	Level I, 60wpm Accuracy = <93%	Level I, 67 wpm Accuracy= <93%	Level K 53 wpm Accuracy= <93%
	Read on instructional level at 115 wpm (60%)	Level I, 60 wpm	Level I, 67 wpm	Level K 53 wpm
	Read passage on instructional level with expression (80%)	Continue working	45%	93% (mastered)

76.

In sum, out of 19 short term objectives, [redacted] fully mastered 9 of them. [redacted] was progressing on 5 others. The few remaining objectives had not yet been introduced, as the IEP still had several months to go before it expired. As of May 2011, [redacted] had not yet received all the special education services that were planned for [redacted] under [redacted] IEP. The IEP was in effect until November 2011 and included ESY services. However, [redacted] only attended Mt. Bethel until May 2011 and [redacted] parents declined ESY services.

77.

Ms. Boutwell also noted marked improvement and progress in [redacted]'s reading ability. (TR., p. 911.) In fact, just about every portion of [redacted]'s progress reports indicated to Ms. Boutwell that [redacted] had made significant progress during the school year. (TR., pp. 920-924.) She noted fewer miscues when [redacted] read, meaning that [redacted] decoding abilities had improved. [redacted] was able to read on a higher level and was able to read with greater fluency, aiding [redacted] comprehension. (TR., p. 944.)

Throughout the course of the year, in addition to the data that she took, Ms. Ronemous also saw informal evidence of [REDACTED]'s progress in reading. She saw [REDACTED] become more interested in reading books and noticed that [REDACTED] really enjoyed an informational writing assignment on snakes, which was a particular interest for [REDACTED]. In addition, [REDACTED] independently brought in a book, "Diary of a Wimpy Kid," to read during CRCT testing. The book is very popular among third grade students, and Ms. Ronemous saw [REDACTED] reading the book independently after [REDACTED] completed his CRCT testing. (TR., p. 987.) She also saw [REDACTED] becoming more confident and becoming more secure in [REDACTED] reading abilities. (TR., pp. 1014-1015.)

It is unlikely that all of [REDACTED]'s progress from November 2010 to May 2011 can be solely attributed to [REDACTED]'s private tutor, Ms. DeRosa. (TR., pp. 926, 1013-1014.) While at Mt. Bethel, [REDACTED] received daily, intensive instruction from highly qualified educators.

Plaintiff's Private Providers and Witnesses

During the hearing, Plaintiff presented the testimony of Brenda Fitzgerald. Ms. Fitzgerald is Orton-Gillingham trained and certified. (TR., p. 295.) She has no personal knowledge of [REDACTED] (TR., p. 305.) She has not reviewed [REDACTED] educational records, has never observed [REDACTED] in any educational setting, and has never met [REDACTED] (TR., pp. 305-306.) The only document she has ever seen regarding [REDACTED] is the District's psychoeducational evaluation conducted in October 2010. (TR., p. 306.) She has never attended a single IEP meeting for [REDACTED] and has never spoken to any of [REDACTED] teachers. (TR., p. 351.) Despite her lack of personal knowledge regarding [REDACTED], Ms. Fitzgerald opined that she would have chosen the Wilson

Reading System to remediate [REDACTED] dyslexia. (TR., p. 309.) She acknowledges, however, that there are other methodologies to remediate dyslexia. (TR., pp. 338-39.)

81.

Plaintiff also presented the testimony of Jean DeRosa. Ms. DeRosa tutored [REDACTED] two days a week between late November 2010 and May 2011, for a total of 36 one-hour sessions. (TR., p. 1335.) Ms. DeRosa opined that she would have expected to see [REDACTED] have great difficulties with written expression. (TR., pp. 1345-1346.) The evidence suggests, however, that [REDACTED] was performing in the average or even superior range in the area of written expression, as assessed by both Dr. Bunke and Dr. Montiel. Ms. DeRosa never observed [REDACTED] in any educational setting. (TR., p. 1350.) Ms. DeRosa would not characterize [REDACTED]'s progress during her tutelage as "excellent." (TR., pp. 1380-1381.) She has no personal knowledge of how [REDACTED] performed while in the District, however, and did not opine on the ample evidence of progress that [REDACTED] had made while in the District, as shown through evaluations, data, progress reports, and teacher observations.

82.

[REDACTED]'s parents testified that they wanted Ms. DeRosa to be able to openly communicate with [REDACTED]'s teachers. However, no written permission allowing the District to share otherwise confidential information with Ms. DeRosa was ever provided. (TR., pp. 525, 994.) Ms. DeRosa, likewise, never saw any such authorization allowing the District to release [REDACTED]'s information to her. (TR., p. 1391.)

83.

Ms. DeRosa, however, was under no such prohibition and could have communicated [REDACTED]'s information directly to the District through whatever means she chose and as frequently as she chose. Despite this, she sent only one email to Ms. Ronemous, several months prior to

attending the February 2011 IEP meeting. (TR., p. 996; D-27, p. 297.) She never contacted Ms. Ronemous or any other teacher subsequent to the February 2011 IEP meeting. (TR., pp. 996, 1385-1386.) She also never followed up on the initial contact she made with Ms. Ronemous, when she offered to share reading materials with Ms. Ronemous. (TR., pp. 1386-1387.)

84.

Although Ms. DeRosa advocated for and used the Wilson Reading System with [REDACTED], she also acknowledged that she used some of the Foundations materials while tutoring [REDACTED] (TR., pp. 1334, 1384, 1393.) She further acknowledged that teachers must have the discretion to decide which materials to use. (TR., pp. 1384, 1393.) Finally, Ms. DeRosa opined that the "idyllic" placement for [REDACTED] would be in a school that taught only dyslexic children, and the teachers should be Orton-Gillingham trained. (TR., p. 1381.)

85.

Plaintiffs also presented the testimony of Dr. Kelle Laushey. Dr. Laushey acknowledged that she is not a reading specialist and that her main area of focus is children with autism. (TR., pp. 1311, 1315.) [REDACTED] is not a child with autism. (TR., p. 1311.)

86.

Dr. Laushey attended one IEP meeting for [REDACTED]. Other than that, she had no involvement in [REDACTED]'s education. She did not observe [REDACTED] in any educational setting, did not communicate with any of [REDACTED]'s educational providers, and has no knowledge of [REDACTED]'s education other than what she has been told by [REDACTED]'s parents. (TR., pp. 1315-1316.)

87.

Dr. Laushey is a special education teacher and former employee of the District. She is well versed in the District's special education processes. (TR., p. 1316.) She is also close personal friends with Plaintiff and [REDACTED] family, having known [REDACTED] since [REDACTED] was a baby. (TR., pp.

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1316-1317.) If she had seen anything that she believed warranted any kind of special education intervention for [REDACTED], she knew how to guide [REDACTED] parents through the special education process. For example, she was aware that the parents could have made a direct referral for special education services. (TR., p. 1317.) Dr. Laushey never advised [REDACTED]'s parents to pursue special education, because she did not realize that there was a problem. (TR., pp. 1317-1318)

The Swift School

88.

At the unilateral selection of [REDACTED] parents, [REDACTED] has attended The Swift School during the Summer of 2011 and as a full-time student since August 2011. (TR., p. 1432.) Plaintiff's witnesses described The Swift School as an "ideal," "best," and "most appropriate" placement for [REDACTED] (TR., pp. 1393-1394, 1442.) The Swift School is a "specialized school." (TR., p. 1473.) All of the students accepted at The Swift School have a "diagnosis of some type of language related learning disability." (*Id.*) Ms. Joan Gerkin, the Dean of Faculty of The Swift School, describes the student body as "homogenous." (*Id.*) Every student at The Swift School has a learning disability, and some students have other disabilities, as well. Consequently, there are no typical or nondisabled students enrolled or attending The Swift School. (TR., pp. 1473-1474.)

89.

The Swift School offers no direct speech language therapy for its students, regardless of need. Rather, an on-staff speech language therapist may offer informal advice to teachers or do whole-class lessons. (TR., p. 1486.) Occasionally, the speech language therapist may pull students out of class for small group. (TR., p. 1507.) Ms. Gerkin was unaware as to whether [REDACTED] received any speech therapy in a small group while at The Swift School. (TR., p. 1507.)

There is no evidence, however, that there is any such service offered on any individual basis or tailored to any individual student's needs.

90.

The Swift School uses a particular methodology, the Orton-Gillingham methodology. This methodology was described by Ms. Gerkin as (1) explicit teaching of a skill; (2) having students practice a skill; and (3) having a teacher assist students as they practice the skill. (TR., pp. 1488-1489.) Orton-Gillingham is just one methodology. (TR., p. 338.) There are, of course, many other methodologies that have been developed to teach reading. (TR., pp. 338-339, 1489-1490.)

91.

Teachers at The Swift School may use several parts of commercially-available programs, such as Phonics First, Recipe for Reading, Open Court, Wilson, and Language!. Alternatively, they may decide to use all of the programs, some of the programs, some parts of several programs, or none of the programs at all. (TR., p. 1490.) While the teachers may use parts of the Wilson Reading System, they do not follow it word-for-word. (TR., pp. 1492-93.) Rather, they follow the school's specific sequence of teaching phonics skills. (TR., p. 1493.) With regard to the substantive curriculum, The Swift School follows the Georgia Performance Standards, the same curriculum used by the District. (TR. p. 1499.)

92.

Although Ms. Gerkin stated that teachers may decide which commercially-available programs are used with her "guidance," she is often not on The Swift School campus. She is on site for only one week per month and does not attend every teacher team meeting. (TR., pp. 1491-1492.) Ms. Gerkin acknowledged that teachers themselves must make decisions about

what materials to use and how to use them for the benefit of their students. (TR., p. 1493.)
Teachers at The Swift School create their own lesson plans. (TR., p. 1496.)

93.

According to Ms. Gerkin, there are approximately 12 students in [REDACTED]'s class.¹⁰ (TR., p. 1494.) For some period of time during the school day, approximately 90 minutes, students are broken into three smaller groups of approximately four students each. One group will work with a lead teacher who may work on direct instruction. Another group will work with an associate teacher to review work. The final group will not work with a teacher at all but will instead work independently. (TR., pp. 1494-1495.) No evidence was presented as to whether any of these teachers are certified in the State of Georgia to serve as classroom teachers.

94.

Further, it is unclear what sort of professional qualifications, if any, are required of "associate teachers." While associate teachers may work under the supervision of lead teachers, it is clear that direct supervision is impossible, given that lead teachers and associate teachers are conducting separate activities at the same time with different groups of students. (TR., pp. 1494-1495.)

95.

Every class at The Swift School is a small group class, except for Art and Music. (TR., p. 1498.) There are no typical or nondisabled students in any of these classes, as there are no typical or nondisabled students at The Swift School. (TR., p. 1497.) While all students are disabled, they are not segregated by disability. Accordingly, one class may have students with varying disabilities in it. (TR., p. 1497.)

¹⁰ Ms. Gerkin has never observed [REDACTED] in any classroom and has never evaluated him. (TR., p. 1493.)

█████ participated in a summer program offered by The Swift School. The program is experiential only (i.e., activity based), with no data of any sort taken. (TR., pp. 1500-1501.) In fact, although █████ has been enrolled at The Swift School since August 2011, Plaintiff presented no quantitative evidence of █████ current educational performance or of █████ progress while enrolled in The Swift School.

Conclusions of Law

1.

Appeals before this Tribunal are *de novo* proceedings, and the standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(3), (4). As the party bringing this hearing request and seeking relief, Plaintiff bears the burden of proof as to all issues for resolution. *Schaffer v. Weast*, 126 S. Ct. 528, 537 (2005).

2.

In this case, Plaintiff raised issues related to the timeliness of Plaintiff's evaluation or, stated differently, the District's failure to timely identify Plaintiff as a child with a disability. Specifically, Plaintiff asserted that "[t]he school system did not provide any advanced testing to determine what was contributing to █████'s lack of progress until 3rd grade[,] at which point █████ was diagnosed with dyslexia."

3.

Plaintiff also raised issues related to the placement and the appropriateness of the education provided to Plaintiff. Specifically, Plaintiff alleged that Defendant did not have the "staff or curriculum to remediate [Plaintiff's] dyslexia." Plaintiff further alleged that removing █████ from a general education classroom for 30 minutes twice a week, in addition to being placed

in special education classes for Reading and Language Arts was "highly restrictive and therefore inappropriate."

Plaintiff's Identification/Evaluation Claim

4.

The gist of Plaintiff's claim appears to be that there was a delay in evaluating Plaintiff for a disability. For the reasons that follow, Plaintiff failed to establish that the District should have evaluated [REDACTED] for a disability sooner than it did.

5.

Plaintiff presented no evidence to support a finding that the District should have evaluated [REDACTED] for a Specific Learning Disability in the area of reading prior to October of 2010. In fact, the evidence in the record supports the District's actions.

6.

Near the end of [REDACTED]'s kindergarten year, the District recognized that Plaintiff was having some difficulty reading. For this reason, the District recommended EIP services. [REDACTED] began EIP services for reading during [REDACTED] first grade year and continued receiving EIP services through part of [REDACTED] third grade year. While receiving those services, [REDACTED] passed the CRCT each year, advanced to the next grade, and continued to make progress in [REDACTED] reading. Because [REDACTED] continued to show progress, none of [REDACTED] teachers suspected that [REDACTED] may have a disability.¹¹ Additionally, students are not expected to be fluent readers in first grade.

¹¹ At no time did Plaintiff's parents request that [REDACTED] be evaluated for a disability in the area of reading. Similarly, Maureen Mullins, the tutor hired by Plaintiff's parents, did not see any "red flags" that suggested that [REDACTED] had a disability. Ms. Mullins tutored Plaintiff during the first few months of [REDACTED] third grade year.

7.

Thereafter, [REDACTED] was started on the RTI process. The IDEA implementing regulations specifically provide for the use of the RTI process to identify children with Specific Learning Disabilities. 34 C.F.R. § 300.307(a)(2).

8.

It was not until [REDACTED]'s second grade year that [REDACTED] teacher became concerned with the pace of [REDACTED] progress. For that reason, she advanced [REDACTED] to Tier 2 of the RTI process. In April of 2010, [REDACTED]'s teacher recommended that [REDACTED] be moved to Tier 3 of the RTI process. However, because there were less than six weeks left in the year, [REDACTED] could not officially be moved on to Tier 3. Despite [REDACTED] slowing progress, [REDACTED] passed the second grade CRCT and advanced to third grade.

9.

Early in [REDACTED] third grade year, [REDACTED]'s teacher, Ms. Boutwell moved [REDACTED] on to Tier 3 of the RTI process and notified [REDACTED] parents of her concerns regarding [REDACTED]'s lack of progress in reading. After failing to make sufficient progress on Tier 3, Ms. Boutwell referred [REDACTED] for an evaluation to determine whether [REDACTED] was eligible for special education services. On September 8, 2010, the school district requested and obtained [REDACTED]'s parent's consent to evaluate [REDACTED] for special education services. Dr. Bunke conducted the evaluation within forty days of receiving parental consent. The IEP Eligibility Meeting was held on November 11, 2011, and [REDACTED] began special education services on November 15, 2011.

10.

Prior to second grade, no one suspected or suggested that [REDACTED] may have a learning disability. When [REDACTED]'s progress began to slow, [REDACTED] teachers initiated the RTI process and advanced [REDACTED] appropriately. Thereafter, when [REDACTED] failed to respond to the interventions, [REDACTED]'s

teacher referred [REDACTED] for an evaluation. The evaluation and IEP Eligibility Meeting were conducted in a timely fashion and services were quickly started. For these reasons, Plaintiff failed to establish that the District inappropriately delayed evaluating [REDACTED] for special education services.

Plaintiff's FAPE Claim

11.

As noted *supra*, Plaintiff claims that [REDACTED] was denied a FAPE because the District does not have the "staff or curriculum to remediate his dyslexia." Additionally, [REDACTED] asserts that removing [REDACTED] from general education classes for 30 minutes, twice a week, in addition to being placed in special education classes for Reading and Language Arts, created a highly restrictive environment and was therefore inappropriate.

12.

Under the Individuals with Disabilities Education Act students with disabilities are entitled to a free appropriate public education ("FAPE"). 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.101. "The purpose of the IDEA generally is 'to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living" *C.P. v. Leon County Sch. Bd.*, 483 F.3d 1151, 1152 (11th Cir. 2007) (quoting 20 U.S.C. § 1400(d)(1)(A)).

13.

The Act charges the school district with providing a FAPE in the "least restrictive environment." 20 U.S.C. § 1412(a)(5)(A). This means that "[t]o the maximum extent appropriate" the school district must educate disabled children with their non-disabled peers. *Id.*; 34 C.F.R. § 300.114.

14.

While it is clear that most, if not all, parents seek an education that maximizes their child's potential; the IDEA does not impose such a requirement. *Bd. of Ed. v. Rowley*, 458 U.S. 176, 197, 102 S. Ct. 3034, 3046 (1982). The Act speaks in terms of an "appropriate" education, which the Supreme Court has interpreted as an education that is "sufficient to confer some educational benefit upon the . . . child." *Id.* at 200.

15.

In *Board of Education v. Rowley*, the United States Supreme Court developed a two-part test for determining whether the school district has provided a FAPE in compliance with the Act. 458 U.S. at 206-07. That test is as follows: "First, has the [school district] complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefit?" *Id.* If the school district has satisfied these requirements, they have complied with the Act and the judicial inquiry ends. *Id.*

16.

Plaintiff has not raised, nor did the evidence reveal, any procedural violations of the IDEA. To the contrary, the District held multiple IEP meetings, in which [redacted]'s parents and their invited guests participated, and notified the parents of their rights under the Act.

17.

With regard to a denial of FAPE, Plaintiff bears the burden of proving that (1) the staff and curriculum offered by the District are inappropriate under IDEA; (2) the District's provision of speech language therapy was overly restrictive; and (3) placement at The Swift School is appropriate and necessary. 20 U.S.C. § 1412(a)(10)(C); *Schaffer*, 126 S. Ct. 528; *Sch. Comm. of*

the Town of Burlington v. Dep't of Educ. of the Commonwealth of Mass., 471 U.S. 359, 369 (1985).

18.

In determining whether a student has received adequate educational benefit, and therefore received a FAPE under the standard outlined by both the United States Supreme Court and the Eleventh Circuit, a student's academic progress and his ability to advance from grade to grade are important factors for consideration. See, e.g., *Rowley*, 458 U.S. at 203-204; *C.J.N. v. Minneapolis Pub. Schs.*, 323 F.3d 630, 638 (8th Cir. 2003), cert. denied, 540 U.S. 984 (2003); *Kings Local Sch. Dist. v. Zelazny*, 325 F.3d 724, 730 (6th Cir. 2003); *Cypress-Fairbanks Indep. Sch. Dist.*, 118 F.3d 245, 253-54 (5th Cir. 1997); *W.C. v. Cobb County Sch. Dist.*, 407 F.Supp.2d 1351, 1360 (2005); *Nygren v. Minneapolis Pub. Schs.*, 2001 U.S. Dist. LEXIS 21980, at *9 (D.C. Minn. 2001), aff'd, 323 F.3d 630, cert. denied, 2003 U.S. LEXIS 8045; *Hall v. Shawnee Mission Sch. Dist.*, 856 F. Supp. 1521, 1529 (D.C. Kans. 1994).

19.

Here, there is ample evidence that [REDACTED] made significant academic progress while enrolled at Mt. Bethel. Every year [REDACTED] met or exceeded expectations on the CRCT. Every year, [REDACTED] successfully progressed from grade to grade. After [REDACTED] was determined eligible for special education, [REDACTED] showed progress on formal evaluations, classroom based assessments, and on [REDACTED] IEP goals and objectives. Even the informal observations of [REDACTED] teachers indicated that [REDACTED] was progressing.

20.

While it is understandable that Plaintiff's parents would seek to "maximize" [REDACTED] potential, this is not what the law requires. See *Mandy M. v. Fulton County Sch. Dist.*, 205 F. Supp. 2d 1358, 1366 (N.D. Ga. 2000) (citing *Rowley*, 102 S. Ct. 3034, 3048 (1982)) ("The state is not

required . . . to maximize the handicapped child's potential; rather, the state must provide the child a 'basic floor of opportunity,' consisting of access to specialized instruction and related services.")

21.

Plaintiff's primary complaint about the services provided by the District relates to the methodology it chose to use. In particular, Plaintiff argued that the Foundations program used by the District was not sufficient to remediate [REDACTED] dyslexia. Instead, Plaintiff's witnesses advocated for the Wilson Reading System. Both programs are based on the Orton-Gillingham methodology. For the following reasons, Plaintiff's argument is without merit.

22.

"Rowley and its progeny leave no doubt that parents, no matter how well-motivated, do not have a right under the [statute] to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child." *M.M. v. Sch. Bd. of Miami-Dade County*, 437 F.3d 1085, 1102 (11th Cir. 2006), quoting *Lachman v. Illinois Bd. of Educ.*, 852 F.2d 290, 297 (7th Cir. 1988). "Indeed, . . . as long as the district offers an appropriate educational program, the choice regarding the methodology used to implement the IEP is left to the district's discretion." *Joshua A. v. Rocklin Unif. Sch. Dist.*, 2008 U.S. Dist. LEXIS 26745, at *6-7 (E.D. Cal. Mar. 31, 2008.) (citing *Rowley*, 458 U.S. at 208).

23.

An appropriate education is one that is tailored to the student's needs and calculated to confer some educational benefit. *Rowley*, 458 U.S. 176, 188-189 (1982). Here, the educational program provided by the District to [REDACTED] was tailored to [REDACTED] needs. The IEP team developed goals and objectives with the help of Plaintiff's parents and their invited guests. Those goals and objectives specifically addressed [REDACTED]'s reading weaknesses. Additionally, the IEP was

reasonably calculated to confer [REDACTED] with some educational benefit. This is established by the fact that [REDACTED] did advance from grade to grade and did exhibit progress. Accordingly, Plaintiff's claim regarding the methodology used by the District fails.

24.

Plaintiff further alleged that the District does not have the staff to remediate his dyslexia. Plaintiff appears to be arguing that [REDACTED]'s special education teacher and paraprofessional are not highly qualified. As an initial matter, it is not clear that a claim that a teacher is not "highly qualified" can serve as a basis for relief for an individual student in a due process hearing. See 34 C.F.R. § 300.156(e) ("Notwithstanding any other individual right of action that a parent or a student may maintain under this part, nothing in this part shall be construed to create a right of action for the failure of a particular [state educational agency] or [local educational agency] employee to be highly qualified").

25.

Nevertheless, even if the absence of highly qualified teachers could serve as a basis for relief, Plaintiff has failed to establish that [REDACTED] special education teacher was not highly qualified. To the contrary, Ms. Ronemous did meet the criteria for a highly qualified teacher. She is certified as a special education teacher in numerous areas, including reading. The requirement for her to be a certified special education teacher was not waived, and she holds a bachelor's degree and a master's degree. 34 C.F.R. § 300.18.

26.

Plaintiff, in [REDACTED] post-hearing submission, appears to argue that Ms. Sigmund, the paraprofessional in [REDACTED] special education class was required to meet the criteria for a highly qualified special education teacher. This argument is without merit. Title 34, section 300.156(b) of the Code of Federal Regulations specifically provides that paraprofessionals need only meet

the state requirements for paraprofessionals and not have had that requirement waived on an emergency, temporary, or provisional basis. 34 C.F.R. § 300.156(b)(1), (2). Ms. Sigmund not only met this qualification, but she clearly exceeded it. She was a certified paraprofessional, she had a bachelor's degree in psychology, and she was in the process of completing her master's degree in education with an emphasis in special education. Accordingly, Plaintiff's claim that the District does not have the staff to remediate [REDACTED] dyslexia fails.

27.

Finally, Plaintiff characterized the District's provision of speech and language services as overly restrictive. As noted *supra*, the IDEA requires that to the "maximum extent appropriate" children with disabilities should be educated with children who are not disabled, or in the "least restrictive environment." 20 U.S.C. § 1412(a)(5)(A). Plaintiff presented no testimony or other evidence to support a conclusion that removing [REDACTED] from [REDACTED] general education classes 30 minutes twice a week, in addition to [REDACTED] small group special education classes for Reading and Language Arts was overly restrictive or inappropriate.¹² The IEP team, including Plaintiff's parents, determined that small group classes for Reading and Language Arts were the appropriate means to address [REDACTED] reading deficits. Furthermore, the nature of [REDACTED]'s speech/language services was such that [REDACTED] required one-on-one or small group sessions outside of the regular classroom. Plaintiff failed to present any evidence to the contrary. For the foregoing reasons, Plaintiff failed to prove that the District denied [REDACTED] a FAPE.

¹² Ironically, the placement advocated by Plaintiff (i.e., The Swift School) is highly restrictive in that all of the students are disabled. There are no non-disabled students at The Swift School.

Private Placement at Public Expense

28.

Plaintiff alleged that because the District failed to provide [REDACTED] with a FAPE, the District should pay for [REDACTED] tuition at The Swift School. "It is well settled that an award of reimbursement for the expense of private school is allowed under the Act when the private placement is appropriate for the student and an educational program at public school has been inadequate." *Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275, 1285 (11th Cir. 2008) (citing *Burlington*, 471 U.S. at 370). Thus, to be entitled to such an award, the parent must show that the educational program at the public school was inappropriate and that the placement at the private school is appropriate. As noted above, Plaintiff failed to establish that the educational program provided by the District was inappropriate. Ordinarily, this would end the inquiry. However, for the sake of completeness, the undersigned notes that Plaintiff failed to establish that placement at The Swift School was appropriate.

29.

At least one of Plaintiff's witnesses opined that placement at a school such as The Swift School would be "idyllic." However, Plaintiff presented no evidence that the program has provided [REDACTED] with educational benefit. In particular, Plaintiff presented no quantitative evidence of any progress experienced by [REDACTED] while at The Swift School.

30.

Furthermore, there is no question that placement at The Swift School is highly restrictive. All of the students attending the school have a disability. The IDEA expresses a very strong preference for mainstreaming and requires that children be educated in the least restrictive environment with nondisabled peers, to the maximum extent possible. 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2)(i); see also, e.g., *Rowley*, 458 U.S. at 202; *Greer v. Rome City Sch.*

Dist., 950 F.2d 688, 690 (11th Cir. 1991); *C.G. v. Five Town Comty. Sch. Dist.*, 513 F.3d 279, 285 (1st Cir. 2008); *T.F. v. Special Sch. Dist. of St. Louis County*, 449 F.3d 816, 820 (8th Cir. 2006); *Berger v. Medina City Sch. Dist.*, 348 F.3d 513 (6th Cir. 2003); *Evans v. Dist. No. 17*, 841 F.2d 824, 832 (8th Cir. 1988); *Corpus Christi Ind. Sch. Dist. v. Christopher N.*, 2006 U.S. Dist. LEXIS 23568, at *10 (S.D. Tex. 2006); *Swift v. Rapides Parish Pub. Sch. Sys.*, 812 F. Supp. 666, 673 (W.D. La. 1993). Indeed, “[t]he least restrictive requirement remains a consideration for the hearing officer in determining whether the parent chose an appropriate placement.” *W.C. v. Cobb County Sch. Dist.* 407 F. Supp. 2d 1351, 1363 (N.D. Ga. 2005) (citing *M.S. ex rel. S.S. v. Bd. of Educ. of the City Sch. Dist. of the City of Yonkers*, 231 F.3d 96, 105 (2d Cir. 2000)).

31.

Given the restrictive nature of The Swift School and Plaintiff’s failure to present evidence of educational benefit, Plaintiff failed to establish that The Swift School was appropriate.

Decision

For the foregoing reasons, this Tribunal finds that Plaintiff has failed to prove that the District inappropriately delayed evaluating ~~the~~ or that the District denied ~~the~~ a FAPE. Furthermore, Plaintiff failed to prove that The Swift School is an appropriate placement for ~~the~~. Accordingly, Plaintiff’s prayers for relief are denied.

SO ORDERED, this 3rd day of January, 2012.


STEPHANIE M. HOWELLS
Administrative Law Judge