

The following witnesses testified at the hearing: Jennifer Denne, [REDACTED], Dr. Christopher Lemons, Nancy Millice, Vickie Coyle, [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

Following the close of evidence, the parties agreed to a briefing schedule, which required Complainants to submit a brief by December 8, Respondents to submit a brief by December 22, and Complainants to submit a reply brief by January 4, 2021. Those briefs were submitted and received as scheduled. The undersigned then took the matter under advisement and now issues the following decision.

Given the confidential nature of much of this proceeding, in this decision, to the extent possible individuals will not be referred to by their proper name. Rather, they may be referred to as “the student,” or “the principal,” or “the mother.” This will aid in later redaction when this decision is publicly released.

FINDINGS OF FACT

General Background

[REDACTED] (the student), who was born in 2001, is a student in the Western Dubuque Community School District who loves to be around people and joke with them, has a fun personality, and enjoys learning. He is empathetic toward people, enjoys collecting, and wants to be gentle but sometimes does not know his own strength. He also has a variety of unique and complicated issues including epilepsy, moderate intellectual disability, autism spectrum disorder, anxiety, ADHD, behavioral concerns, seizures, and legal blindness. Due to his seizures he is taking three medications and his memory can be affected, sometimes causing him to lose his short term memory.

A University of Iowa neuropsychological report showed the student is in the bottom .1% of many areas, including processing speed and working memory. Likewise, it also concluded that his intellectual functioning is moderately impaired, and he is not expected to improve for the duration of his life.

The student’s parents first noticed a possible intellectual disability between his third and fourth birthday, and he first received special education services from the AEA at the age of three. He has had an IEP since kindergarten, and was in the Western Dubuque Schools from kindergarten through fifth grade, but because he need more behavior support he then switched to the Lawther Academy until ninth grade. He then returned to Western Dubuque midway through the ninth grade after Lawther stopped accepting out-of-district students. Upon his return to Western Dubuque, the student was placed in a separate building (the “connections building”) during his sophomore year about a block away from the high school due to his behavioral issues. The connections building was created to house a behavior program for their students who could no longer attend Lawther.

During that sophomore year, the student did still go to the high school building for lunch and PE. He was in the connections program 50% of the time and in the main high

school 50% of the time. Then, during the student's senior year spent his days in the regular high school building all day as his behaviors had sufficiently improved.

The student's August 2018 IEP, and those moving forward, are relevant to this matter. This IEP had seven goal areas, including two reading goals and two behavior goals. The IEP contained the two reading goals, in part, because the student's mother had expressed these specific concerns at IEP meetings. He was to be provided 40 minutes per day in math, 60 minutes in social skills for peer and adult interaction, 185 minutes in other academics, 40 minutes in reading instruction (focusing on sight words and fluency in a one-on-one special ed. setting), 120 minutes per month in health education (mainly for his seizure disorders), and 185 minutes per day with a paraprofessional (for social skills and academics). This IEP also provided a variety of accommodations, many of which were related to his sight. In addition, he was not to be timed on tests, he worked with a speech language pathologist, received alternative assessments, and there was collaboration between all teachers and staff that dealt with the student to support his progress.

Meeting notes show the IEP team started talking about transition goals in November of 2017, specifically discussing how his goals could change to better prepare the student for more functional, real life, transition skills. The mother asked for some money management instruction and the school accepted this. They also discussed transitioning him out to the community during his junior year for work experiences. An August 17, 2018, prior written notice (PWN) continued the student in the connections program to work on reading, writing, math and behavior, but scheduled him in the main building for vocational skills, PE, and work study. It also noted changing the goals to better prepare him for functional and real life skills.

A November 2018 IEP contained a report from various Keystone AEA resource teams, specifically autism, brain injury, and behavior, all of whom provided a number of recommendations. One academic recommendation was to integrate the student into the regular building as much as possible and to work with adults and peer mentors in work that would target needed post-secondary goals. It was also recommended that literacy and math goals relate to his post-secondary needs in the areas of living, learning, and working. The teams also noted that the student would benefit from more transition skills in the areas of job and domestic skills.

Accordingly, some goals in this IEP were changed to align with these recommendations. In particular, there was an employability goal working toward independence in the workplace. The reading goal was also changed based on the rubric suggested by the AEA teams and were to be within a vocational, project based setting. The math goal likewise was to be in a vocational type setting. There was also added transition activities and supports for employability goals.

A February 25, 2019, PWN showed a class schedule change, based on the school's trimester system, and added extended school year (ESY) services. ESY in behavior, listening comprehension, math, and employability was added due to some regression and other "rare and unusual circumstances." Those circumstances causing the

regression were noted as “many unexpected breaks due to inclement weather which has shown regression” A tentative schedule was discussed with the mother for ESY, but the District does not have a set schedule for any ESY student because it is completely individualized and based on that student’s needs.

During a September 24, 2019 IEP meeting, the participants did discuss whether the student would remain working at Theisen’s, and they looked at alternate work options. The mother expressed her opinion that he should stay at Theisen’s since it would not change his schedule. Also, the Next Step Guided Reading was to be the new reading program in this IEP. Phonics works was also to be instructed. Math was to be focused on daily living and applying it to real life. Just a month later, following an annual review, a PWN was issued adding a work experience to the services page for career exploration and work experience. This would be provided in the school and in the community with the assistance of a job coach “to develop employment and other post-high school living objectives.”

In February of 2020, the IEP team discussed the student’s graduation as compared to his additional needs. A draft was put together for what the student’s transition SDI needs would be. However, because there was a request for a re-evaluation this IEP was never adopted. The team also never got to discuss the student’s ESY needs due to this request. Then, a school closure due to Covid-19 happened soon afterward and no students returned after March 16, 2020.

During the student’s junior year, the PCI curriculum was used, as it was earlier at Lawther Academy. Because it had been used at Lawther, it was decided to continue to use it at the district. Vickie Coyle, who is the director of special education at the school district and prior to that was a teacher and administrator at the Lawther Academy, believes this was an appropriate program in that it is specifically created for students with developmental disabilities, learning disabilities, and autism. It incorporates high-frequency words and real-world words for readers of all ages through a system of repetition, hands-on practice, controlled reading, and high-interest activities. In addition to PCI, the student’s reading was also supplemented with other resources such as Start to Finish and Triumphs.

Then, during his senior year, the student’s reading was switched to Next Step Guided Reading because they were not seeing as much progress as they would like with PCI. They chose Next Step because it can be individualized to a student’s particularized needs. This program continued to assess his needs on a daily basis, and it tailors his instruction by certain “need” areas after identifying his deficits. Next Step stresses multiple strategic actions for decoding and encoding words, and it incorporates all elements of the various phonics approaches in guided lessons. It is taught in small groups, or individually, and is based on the developmental needs of individual students, focusing on developmentally appropriate and needs-based words study lessons during guided reading.

A draft IEP was entered on May 29, 2020, when the student was almost 19-years old. The PWN for this draft reveals that the student had met all of his credit requirements

necessary to graduate, but that he continued to have unmet needs in the areas of adaptive behavior and employability to help prepare him for post-secondary expectations. Consequently, the team made the decision to not graduate the student. The team also, based on a re-evaluation, determined that his unmet transition needs would best be met through real life experiences using functional literacy and math in work environments. To help address those employability transition needs, he was to be provided 300 minutes per week of work experience. Voc Rehab was partnered with to provide those work experiences.

The draft IEP additionally proposed to provide the student with SDI in the area of adaptive behavior, focusing on functional skills, including math, reading, and writing. Two goals were adopted in this area to help monitor his progress. Employability SDI was to be provided focusing on social interaction, math, and literacy skills. The team also agreed to complete a new functional behavior analysis (FBA) and to update his BIP as necessary when school resumed in-person.

The student's parents had requested instruction in core academics in the areas of reading, writing, and math. However, this request was rejected because, as a result of his re-evaluation, the team believed focusing on more functional skills in the community setting was appropriate. The team likewise rejected a parental request for participation in art, PE, and sex education because he had already taken such courses in these areas as were necessary for graduation.

This IEP had three goals in total, including one for employability skills and two for adaptive behavior. The employability goals were to work on endurance in the work setting, stamina, and independence. The measurable goal was to be able to participate and complete expected tasks for 60 minutes with adult assistance in at least 80% of opportunities without a behavior incident. The first adaptive behavior goal was to use his math and reading skills to make purchasing decisions, complete transactions, and navigate community settings with appropriate social interaction skills. His second adaptive behavior goal, in the area of independence and self-initiation, was to utilize his schedule and routines to complete his work and school arrival routing with up to two minutes of think time.

The student's proposed schedule included two hours of SDI working on skills from 8:00 to 10:00 a.m. at school. Then, from 10:00 to 10:15 the school would provide him transportation to his work at Theisen's. From 10:15 to 11:15 he was to work with a job coach at that job site. Finally, at 11:15 the school would provide him transportation either to home or to day hab or day care, which would have been provided as a part of his waiver program if the family chose to take advantage of those services. Or, Voc Rehab had also agreed to work with the student for additional work experience with a job coach, job shadowing, or additional work assessments.

The family was provided this draft IEP on July 6, 2020, and a Prior Written Notice (PWN) on July 15, 2020. However, this Due Process Complaint was filed on August 21, 2020, the Friday before the start of the school year. Consequently, due to the imposition of stay put, this IEP has never been implemented.

██████████ (mother) is the student's mother and she explained some of his unique characteristics. Specifically, she believes he needs to be taught repetitively. His autism disorder manifests itself through rigidity with change and inflexibility. He must be prepared with lots of reminders and he gets frustrated if taken off things he likes to do. He has few social contacts, but does have some friends at school. In 2018, the student started having more contact with the general education students in art and lunch, where he ate with his peers.

The mother, who is a Title 1 elementary reading teacher herself, has always been concerned with the student's reading ability. At the time of the hearing, his reading level was K, while his instructional level was 1st or 2nd grade. In 2018 and the beginning of 2019, the student was taught using the PCI instructional model. The mother raised questions about the use of PCI in some IEP team meetings, wondering what other models were available. Then, in October of 2019, Vickie Coyle informed the mother that they were moving to the Next Step reading program, which Coyle reported had seen some success at the elementary level. The mother never asked for any specific program or curriculum, she just wanted phonics to be taught. Next Step does include a phonics component.

The mother did explain that the student was provided some work study opportunities. He started at Bodine's Electric in Peosta in 2018, performing such work as counting nails and screws to put in piles of 10. While he did not have any other employees with him, he did enjoy the work because he accomplished and finished his tasks quickly. He next worked at Theisen's organizing shelves and bins, and picking up garbage. However he did not like this work, and the toy aisle was distracting to him.

In the end, the mother does believe the student has made progress over the preceding two years in some ways. He now jokes more and is more communicative. His work at Theisen's has opened new opportunities for him. And, he feels more confident in accomplishing his tasks at work. He has a new self-confidence and there has been a phenomenal difference in his self-esteem.

██████████ is a strategist and instructional teacher with the District, and prior to that he was a special education teacher. He became involved with the student when he returned to the District in January of 2017. During the student's junior year, ██████████ had no direct involvement with the student, just with his teachers. He had bi-weekly meetings with those teachers and his paras in order to collaborate and talk about the student and address any concerns. During the student's senior year, he would check in with him every morning, just to maintain a relationship and to give him a routine.

██████████ is a Keystone AEA social worker who serves on its behavior resource specialty team, which is a resource for the IEP teams to call on for further consultation. This team would get involved if an IEP team seeks a recommendation for how to foster a child's progress. They collect data, depending on what the IEP team requests and may do additional testing. She and her team received a referral for the student in 2017.

That team issued a report dated October 31, 2018, in which it made a number of recommendations, including that the student be integrated more into the larger building in order to focus on his transition area and post-secondary needs. Their social skills/behavior recommendation was based on a need to prepare him for life out of high school, and in the job setting. His adaptive skills recommendation likewise was related to transition skills.

The team became involved later in 2018 based on another referral. They took some new observations but largely viewed the existing data due to the extensive review that had just been done. In the end, they recommended continuing to work on the existing goals, but a new academic goal was to tie writing and reading together because they complement each other. In other words, they sought to teach literacy as a whole rather than to do reading and writing separately. The team also recommended a continued focus on transition.

As part of both of these reviews, the team reviewed the existing 2016 functional behavior analyses, but did not recommend that it be updated due to its recent nature. In addition, the behavior progress data was not showing an increase in intensity of severity of behaviors, so they perceived no need to redo the FBA.

Shelley Schafer

Shelley Schafer is a Keystone AEA school psychologist who was assigned to Farley Elementary when the student was attending it. She was also part of the re-evaluation team tasked with determining the best programming for the student when he was a senior. She, along with Amy Pope, was the primary drafter of the re-evaluation report. She primarily drafted the academic portion of the report.

According to this psychologist, given his low level of functioning and difficulty with processing instruction, the student's intellectual functioning is not expected to improve. In fact, her understanding is that because of his extensive seizure history, it could be difficult for him to show consistent behavior from day to day, and he may not be able to access information every day. People with this seizure history may not be able to remember from day to day, which is one of the reasons the student's academic targets have not changed much over the years and show he has not mastered certain subjects.

The recommendation from the re-evaluation was that incremental improvements were expected to be minimal and that more assessments would not provide new helpful information. She believes PCI could be a helpful program for the student, and she has seen cognitively declined people be successful with it in the past. However, regardless of the curriculum, she noted that data indicates the student's progress is expected to be

limited. She would recommend shifting from discrete instruction in reading and math, and embed the literacy and math instruction into the student's post-secondary expectations and work experience settings. It is very important to start looking at functional reading skills. She would recommend him working on what he can use in day-to-day setting, such as budgeting, shopping, etc.

In the end, she recommended an adaptive behavior goal to work on functioning and tasks that can be helpful in a real world setting. No academic goals were recommended because she would take the academic pieces and wrap them into the behavior goal. This, it seems to her, would better suit the student to have a post-secondary and functional focus.

Finally, she believes the student can benefit from reading instruction in general, be it sight words or some other program. However, the neuropsych report said there are no expected changes in his cognitive abilities for his lifetime. All students can learn, according to her, but there may not be significant improvement regardless of the methods used.

2018-2020 Progress Monitoring

The student's 2018-2019 and 2019-2020 progress monitoring reflect that he has made progress in almost all IEP goal areas. For example, in 2018-2019, Goal 1 (employability skills) shows a positive trend line and growth on all data points until the summer break. Those declines in some data points caused an instructor change. Then, in Goal 2 (behavior), the student also showed a slightly positive trend line. While some data points fell below the goal early on, an instructional strategy change appeared to bring those data points significantly up. Goal 3 (reading) also showed some positive growth, but even after there appeared to be some flat lining, an instructional change was made. Finally, in Goal 4 (math), the trend line was positive and the data was generally above the aim line. But, some decline did occur during a time of school break.

Similarly, the 2019-2020 progress monitoring also shows significant growth in all goals. Goal 1, employability skills, noted that the student was working at Theisen's with a job coach during the school year for 30 minutes per day. The baseline was that the student was averaging only eight minutes per day of work before he wanted to quit early. His goal was to increase his endurance and be able to extend that to 60 minutes. Progress was to be monitored via a daily log completed by his work coach. While his trend line was in fact upward, reflecting positive growth, when progress was stalled changes were made to the instructor and to the instructional materials.

Goal 2 in adaptive behavior was essentially to keep the student on task. The measurable goal was expressed as using his math and reading skills to make purchasing decision and complete transactions with appropriate social interaction skills earning 80% four out of five weeks. Progress was to be monitored through a skills chart. This goal's progress monitoring was uneven, due to a medication change and an increase in behavior. Goals 3 and 4 both showed growth and a positive trendline.

Dr. Christopher Lemons

Dr. Christopher Lemons is a professor at Stanford University who holds a Ph.D. in special education. He has a long history of involvement with special education. His specific areas of interest are in improving reading outcomes for children with intellectual and developmental disabilities. He was retained as an expert for this matter and has reviewed the student's situation, including reading his IEPs and various reports.

According to Dr. Lemons, the "science of reading" is a concept looking to what is the most effective way to teach kids to read, and the current view on the science of reading is that it must be "systematic and explicit." In particular, he explained that numerous studies have demonstrated that this is the most efficient, effective approach to teach individuals how to read. This consists of helping students identify and manipulate spoken sounds (phonetic awareness) and understand how these sounds represent the individual letters and letter combinations (phonics).

Dr. Lemons has reviewed the PCI Teachers Manual and has opined that it is not a program he would select for the student. PCI is not multi-component and teaches based primarily on sight words. It also does not look at phonics or phonological awareness. He believes PCI is inappropriate for the student because it does not focus on a broader range of reading skills and children can struggle to become independent readers with this program. It is too narrow of a program to be effective for the student.

Dr. Lemons has also reviewed the Next Step Teacher's Manual. Next Step is a guided reading program that is very popular in the general education classroom, but it has little research behind it. Dr. Lemons feels that a student like this one may miss certain needed skills because it is not systematic and explicit. For example, children with working memory challenges need the systematic and explicit instruction.

In general, Dr. Lemons would not have recommended either PCI or Next Step for the student. But, he does believe the student can indeed learn to read, he just needs frequent progress monitoring. He would recommend such systematic and explicit instruction methodologies as Lindabell, Barton, or Orton-Gillingham. However, Dr. Lemons, who had reviewed the student's school file, did concede that he made some progress his junior and senior year. In particular, the data showed that during his junior year the student's performance on the rubric went from 6% to 31%. This was after his SDI in reading was increased to 60 minutes per day early in the year. The same thing happened during his senior year when he went from 7/16 on his standards rubric but progressed to 12/16 by March, which met his goal.

Jamie Phipps

Jamie Phipps works with the Iowa Department of the Blind as a vocational rehabilitation counselor assisting blind persons with obtaining employment. She also trains, gives assessments, provides accommodations for jobs, and otherwise works with students to transition toward adulthood. The simple goal is to keep a person retained

once they are employed. Vocational rehab counselors also partner with and work on transitions in conjunction with schools.

Phipps knows the student and has worked with him by providing services for the last three or four years. She has not been to every IEP meeting, but did attend every one in 2019 and 2020. From 2017 through 2020 Phipps put together an Individual Plan for Employment (IPE) for the student which was designed to set out the employment goal of each client and show the means by which that goal can be reached. In this IPE, the student identified his occupation goals as to become a production worker, largely because he likes to work with his hands and is good with repetition. Part of this plan called for the school to supply some of these services, such as “disability related skills training” and “rehabilitation technology.” Specifically, this required the school to teach him how to use accommodations during the school day.

A Work Experience Performance Review was to be filled out, rating him on a variety of categories. Phipps used this data to determine what she needed to help the student with. Phipps also worked with an Amerigroup case manager to develop a PowerPoint presentation that would be presented at IEP team meetings.

Nancy Millice

Nancy Millice previously worked as an education consultant in psychiatry, but currently teaches a class at the University of Iowa. Her previous job of 32 years entailed evaluating children to determine appropriate placement and to help with IEP construction and getting necessary services. She conducted an evaluation of the student on July 31, 2020. As part of this evaluation she met with him for one hour, reviewed his school records, and reviewed a neuropsych evaluation. Millice’s takeaway was that the student needs additional support and education to become prepared for adulthood. At the time of evaluation, she found him to need a more functional curriculum such as math and reading in the functional environment. She noted this would be typical for a person with the student’s profile.

Millice observed that the student’s strongest area of functioning is verbal comprehension and sentence combining, but she believes there is still room to improve his reading. She asserts he needs a very basic hands-on approach to this learning, by breaking it down considerably into phonemic awareness and phonetic structure. She opined that the Orton-Gillingham curriculum may be appropriate because it is individualized and builds upon itself. It asks learners to put sounds together and develop a word bank based on phonetic structures. She also believes the student needs explicit instruction on a one-to-one setting where another person goes through the materials with him. He cannot make progress on his own.

However, Millice did concede that there are limits to what the student can learn in reading. For example, he will never be able to read a novel, but his functional reading can improve and with appropriate instruction she thinks he may be able to get closer in reading to his verbal level. In order to transition to adulthood he will need more time with reading and math instruction, as well as more time with the functional curriculum

and putting it into practice in the community. Learning sight words is still a significant part of this, as he does have the ability to recognize sight words. She concluded that it is more about providing education now for unmet needs so he can transition to work and adulthood.

[REDACTED]

[REDACTED] currently is the student's special education teacher, but has worked with and been familiar with him for years. She has been a special education teacher with the District for four years. She started with the student in October of 2017 as a temporary substitute in his sophomore year. That year she taught him math and science, while another teacher taught reading and social studies. They used two teachers that year in order to individualize better for all kids and they also had two paras in the program for a total of three students.

During the student's junior year, he spent half the year at Connections and half of the year at the high school. He had peer partners and some gen. ed. partners, and always had somebody to help him with his behavioral, medical, and other needs. He always needed somebody present who could cope with his aggression and knew those medical needs. In his essential career and life skills class that year, he talked about future plans.

The student's senior year was spent totally in the main high school building setting where he took math, English, PE, strategies, Bobcat time, and wildlife management. He also had a work study experience at Theisen's. This year, Johanna was with him all day long, including PE and lunch. This was so even though there was a para available in those settings and Johanna was not required to be there. Johanna simply enjoyed being around the student and wanted to give him extra support by being present with him as much as she could. In fact, when the school closed in March 2020 due to Covid, she set up a regular weekly Zoom meeting just to stay connected and she dropped some assignments off at his house to provide him some work.

CONCLUSIONS OF LAW

In post-hearing briefing, Complainants assert that the primary issues "are the failure to give [the student] appropriate reading instruction, systematic and explicit instruction in phonological awareness and phonics during the past two years and the lack of a coordinated set of transition activities in a results-oriented process" In making these general arguments, they raise the following specific issues:

- The District has never used a reading program appropriate to meet Brody's unique needs for reading instruction. It has denied FAPE by providing inappropriate reading instruction.
- Brody's IEPs do not include a coordinated set of activities designed to be within a result-oriented process to facilitate his transition from school to post-school

activities, particularly employment. Failing to provide required transition services denies Brody FAPE.

- Brody’s May 2020 IEP does not provide FAPE because it impedes his right to FAPE, effectively impeding complainants’ opportunity to participate in the decision-making process, and would cause a deprivation of educational benefit.
- The three goals in the May 2020 IEP are not reasonably designed to provide special education services to meet Brody’s unique needs.
- The reading goal in the October 2019 IEP does not provide FAPE.

Complainants request a variety of remedies for these alleged violations. First, they seek the provision of systematic, explicit instruction focused on phonological awareness and phonics. They ask that the District find a trained instructor or other scripted instruction. They specifically request that the District retain the University of Iowa Reading Center to supervise the implementation of this instruction. They seek an award of compensatory education for the period of August 21, 2018, two years before the filing date, to the date instruction commences, measured at a rate of one-to-one for the minutes of reading instruction required by his IEPs. Finally, they ask for compensatory education due to the alleged lack of appropriate transition services.

For ease of analysis, I believe Respondents’ suggestion is appropriate: that is, to break Complainants’ issues down into two main themes. First, that the student has been denied FAPE for the 2018-2019 and 2019-2020 school years. Second, that the IEP drafted for the 2020-2021 school year was reasonably calculated to confer educational benefits to the student.

IDEA

One of the principal purposes of the Individuals with Disabilities Education Act (IDEA) 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.”¹ The IDEA offers states federal funding to assist in educating children with disabilities and, in exchange for acceptance of such funding, the state must agree to, among other things: 1) identify, locate, and evaluate children with disabilities who are in need of special education and related services; and 2) provide a free appropriate public education to all children with disabilities residing in the state between the ages of 3 and 21.²

Free appropriate public education (FAPE), as defined by the IDEA, means special education and related services that:

¹ 20 U.S.C. § 1400(d)(1)(A).

² *Id.* § 1412(a)(1)(A), (a)(3)(A).

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.³

Under the IDEA framework, special education and related services are provided in conformity with the student's individualized education program, or IEP.⁴ "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child."⁵ The IEP is developed by an IEP team, which includes the child's parents, at least one regular education teacher if the child participates in the regular education environment, at least one special education teacher or provider, a representative of the local educational agency, an individual who can interpret the instructional implications of evaluation results, other individuals who have knowledge or special expertise regarding the child, and, where appropriate, the child.⁶

Under the IDEA, a parent or public agency may file a due process complaint relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child.⁷ The burden of proof in an administrative hearing challenging an IEP is on the party seeking relief.⁸ Complainants, therefore, bear the burden of proof in this proceeding.

In deciding whether a challenged IEP satisfies the requirements of the IDEA, two issues are relevant: (1) whether the state complied with the procedural requirements of the statute, and (2) whether the challenged IEP was "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206–07.

"To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F.*, 137 S. Ct. at 999. The IEP must establish an

³ *Id.* § 1401(9).

⁴ *Id.* § 1401(9)(D).

⁵ *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (citing *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181 (1982)).

⁶ 20 U.S.C. § 1414(d)(1)(B).

⁷ 34 C.F.R. § 300.507(a); 281 Iowa Administrative Code (IAC) 41.507(1)..

⁸ *Sneitzer v. Iowa Dep't of Educ.*, 796 F.3d 942, 948 (8th Cir. 2015) (citing *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 61-62 (2005)).

“educational program [that is] appropriately ambitious in light of [the child’s] circumstances,” and should give the child “the chance to meet challenging objectives.” *Id.* at 1000. In the task to analyze this, the undersigned’s “review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Id.* at 999 (emphasis in original). The school is not required to provide an optimal experience for a student with a disability, but instead must simply provide the student with a FAPE consistent with the IEP. *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 198–200 (1982).

Overall, the IEP “must be responsive to the student's specific disabilities, whether academic or behavioral,” *CJN v. Minneapolis Pub. Schs.*, 323 F.3d 630, 642 (8th Cir. 2003). It must be “reasonably calculated to enable” the child to make academic progress. *See Andrew F.*, 137 S. Ct. at 997.

Denial of FAPE 2018-2020 School Years

As noted above, Complainants raise issues with regard to the education provided to the student during the 2018-2020 school year time frame. Most particularly, they center on the reading instruction and the transition services provided to him.

Reading Instruction. Complainant’s primary allegation in this division concerns the reading program provided to the student. They contend the District has never used a reading program appropriate to meet his unique needs for reading instruction, and that he was denied FAPE by providing inappropriate reading instruction. In particular, they argue the methodology used was inappropriate, and that “systematic and explicit” instruction was required in order for him to have received FAPE. At its heart, Complainants position is that FAPE required him to be taught reading via a different, but specific, methodology.

Complainants put forth a definition of these terms as explained by Dr. Lemons. According to him, “systematic” means

that there’s a very clear spoken sequence and the intervention provides the teacher with clear guidance on how to move through the developmental skills that are being taught so nothing is missed.

And, “explicit” instruction “means that we clearly tell students what we want them to know, and we provide immediate corrective feedback.”

Dr. Lemons offered that such specific products for this methodology are Orton-Gillingham, Barton, and Wilson. Dr. Lemons believes the student can learn to read, but does not believe that either PCI or Next Step, the two reading programs used for the student’s instruction, are based on the science of reading. Specifically, he maintains PCI was inappropriate because it only focuses on sight words and that Next Step is

inappropriate because even though it is very popular in the general education classroom, there is little research behind it. Because it is not systematic and explicit, as Dr. Lemons explained the terms, children like this student may miss certain skills. However, Vickie Coyle did testify that Next Step was chosen for this student in part because they were “able to individualize the instruction for” the student.

Generally speaking, the IDEA allows a district to use any educational methodology that allows a student with a disability to receive FAPE unless the student's IEP calls for the use of a particular methodology. *See, e.g. Bd. of Educ. Of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982). However, in some instances, a student may need a particular methodology to receive an educational benefit.

The IDEA requires an IEP to include "a statement of the special education, related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child." 34 C.F.R. § 300.320 (a)(4). However, certainly, nothing in the IDEA requires an IEP to include specific instructional methodologies. *See* 71 C.F.R. § 46665. But, if an IEP Team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP. *Id.*

As the Supreme Court has stated,

In assuring that the requirements of the Act have been met, courts must be careful to avoid imposing their view of preferable educational methods upon the States. The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child.

Rowley, 458 U.S. at 207. This fosters a sentiment that a child's education is largely entrusted to state and local agencies. *Id.* And, courts should be disinclined to overturn a district's choice of appropriate educational theories. Deference must be provided to that choice.

Complainants did make a valid case that a reading product such as Orton-Gillingham or Barton would have been a good choice for this student, perhaps even a better choice than the products the District elected to employ. However, that is not the question here. The question here is whether the District's choices provided the student FAPE. As has been made clear many times over, the IDEA does not require a school district to provide special education students with *the best* education or services available; rather it must provide an educational benefit in light of the child's unique circumstances.

Here, the IEP team found that over the years PCI and Next Step were appropriate for the student given his unique needs. The record here shows that during the 2018-2019 school year, the student did make progress in his reading instruction, moving from a baseline of 6% to 31%. Then, during the 2019-2020 school year, while using Next Steps and after his reading SDI was increased to 60 minutes per day early in the year, progress was also demonstrated, moving from a baseline of seven standards mastered to twelve standards mastered out of 16 possible. This progress is not insignificant, especially given the student's unique situation, abilities, and needs. But, it is consistent with the Student's abilities, conditions, level of cognitive functioning, and prospect for progress.

It is clear that a district may use any educational methodology that allows a student with a disability to make progress consistent with the standard expressed in *Andrew F.* Neither the parents' preference for a different methodology nor evidence that the student would make greater progress with a different technique will make the District's program inadequate. Complainants argue the student could only make educational progress via a systematic and explicit instruction methodology such as Barton or Orton-Gillingham. However, the District's witnesses each testified credibly that PCI and Next Step were appropriate educational methods for the student and did allow him to make some progress. The District is entitled to deference on the issue of educational methodology. *Rowley*, 458 U.S. at 207.

Although the parents here may desire a different, specific methodology, and may have experts who would recommend it for the student, the bottom line is whether the student's program is designed to confer an educational benefit in light of the student's unique circumstances. The IEP team here had no duty to include the parent's preferred reading methodology in the student's IEP. The program the District employed addressed the student's needs and was calculated to provide a FAPE. This result is consistent with the IDEA's preference to defer to a district's choice of appropriate educational methodologies.

Transition Services: Complainants' second issue regarding the 2018-2020 timeframe is that the District's failure to provide required transition services to the student denied him FAPE. The IDEA requires IEPs for older students to include a plan for a coordinated set of services designed to move special education students successfully from school to post-school settings. Transition services are a coordinated set of activities that

- a. Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to postschool activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing

and adult education, adult services, independent living, or community participation;

b. Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes the following: (1) Instruction; (2) Related services; (3) Community experiences; (4) The development of employment and other post-school adult living objectives; and (5) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

281 IAC 41.34. These services may be special education, if provided as specially designed instruction, or a related service. *Id.*

Transition services can include a broad range of services, including vocational and career training based on the unique needs of the individual student, taking into account that child's strengths and interests. 71 Fed. Reg. 46,579 (2006). In certain situations, those services may be functional skills to allow students who are not ready for independent work to allow those student to continue the training necessary so he/she may live and work independently, given the disabilities. Transition goals must demonstrate that a student will receive the services necessary to achieve his goals based on the student's vocational choices. *In re Student with a Disability*, 116 LRP 15056 (2016).

Complainants note an anticipation that the student will move on to employment after school and they expect that he should be prepared for that move. However, they do not believe the goals in his IEP are adequate to meet his needs. According to Complainants, the transition language in his IEP is "just language" and does not describe a set of results-oriented, coordinated activities to improve the student's opportunities for employment. In particular, they assert there should have been appropriate measurable post-secondary goals based on age appropriate assessments. This, they argue, deprived the student of FAPE.

It is apparent that the team had discussed transition issues at least as of August 2018, and before. Information was gathered from interviews with the student and teachers, a Comprehensive High School Transition Survey, school records, and observations. Meeting notes from an August 17, 2018, IEP team meeting showed a discussion of how the student's "goals could change to better prepare him for a more functional, real, life, transition skills." The mother had made a suggestion of creating a ledger for better money management skills, and the school agreed to develop this. In addition it was noted that

In order to develop employability skills [the student] can be provided work experience classes through WDBQ HS. The program starts with him

working at the high school building to help determine an appropriate work fit then develop work skills for [the student] and gradually transition him out in the community.

These thoughts were implemented in the IEP and in practice with him being provided 62 minutes per day of work experiences either in the school or in the community to develop employability skills. He was also assigned a work experience coordinator to develop jobs and for appropriate instruction in work skills and behaviors. As for work experiences, he first worked at Bodine's and he later worked at Theisen's. A rubric was developed providing for several measurable concepts, including promptness to work, focus and attention on the job, quality of work, appropriate hygiene, meeting dress code, and several others.

His first goal in this 2018 IEP was employability skills, consisting of 13 such measurable employability skills. His annual goal was that in 36 weeks in the work environment, he would score 70% or higher without a job coach on the performance sheet. Later at a February 25, 2019 meeting, the team was informed that the student was doing very well in his work experience at Bodine's and it discussed adding peers to his work site. Extended school year services were also to be added. Also, Jamie Phipps, the vocational rehabilitation counselor, suggested that she could complete a work place assessment so the student could get a paid summer job.

The student then began a work experience at Theisen's in the summer based on the mother's indication that repetitive and task-driven work would be best for the student and based on the concern that staying at Bodine's would not foster growth. Also, a comprehensive high school transition survey was completed, with input from the mother and the student.

Goal #1 on both the 2018 and 2019 IEPs was employability skills. In 2018-2019, this showed a positive trend line and growth on all data points until the summer break. Similarly, the 2019-2020 progress monitoring also shows growth in Goal #1, employability skills. It was noted that the student was working at Theisen's with a job coach during the school year for 30 minutes per day. The baseline was that the student was averaging only eight minutes per day of work before he wanted to quit early. His goal was to increase his endurance and be able to extend that to 60 minutes. Progress was monitored via a daily log completed by his work coach. The student's trend line was in fact upward, reflecting positive growth.

A review of this record shows that the District and the IEP team put great thought and discussion into the student's transition needs. It provided to the student an informed comprehensive set of services and opportunities. The student's IEPs contained appropriately ambitious and reasonable goals, all of which were measurable and age appropriate. The goals and services evolved over time based on his growth, needs, and

interests. The District took into account parental input, and it took into account the student's desires about what he wanted his future to look like. Data was derived from his work activities and reflected progress and growth toward his goals.

Accordingly, I conclude that any allegation that the District failed to provide FAPE with regard to the student's transition services is without merit, and is therefore rejected.

FAPE in the May 2020 IEP:

Complainants' second general argument pertains the alleged infirmities in the draft IEP for the 2020-2021 school year. In this division, Complainants argue the student's May 2020 IEP does not provide FAPE because it impeded their ability to participate in the decision-making process and would otherwise cause a deprivation of educational benefit. This, they believe, was part and parcel of the District's primary intention to exit the student from high school and to graduate him. In making this broad argument, they set forth seven specific alleged violations:

- No provision for physical education.
- Exclusion from general education classes because he had completed his graduation requirements.
- Ending his school day at 11:15.
- Failing to provide a PWN explaining reasons for the shortened day.
- No bench marks or short-term objectives for IEP goal progress monitoring.
- Failure to focus on core academics.
- Failure of a PWN to explain refusal to continue with core academics.

As suggested by Respondents, for ease of analysis, the first three issues can be grouped together and analyzed under the language of the District's failure to treat the student as someone who has not earned all of his necessary graduation credits. The fact is that here, the student has already earned all credits necessary to graduate, but his IEP team made the decision to not graduate him yet due to his unmet transition needs.

As for the PE component, Complainants cite to 34 C.F.R. § 300.108, which generally requires that "[e]ach child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children . . ." The District, however, responds that the student has met all of his PE graduation requirements. While the District only requires four PE credits during high school, the student actually has accumulated ten credits. As such, because the District would not normally require or provide PE to other non-disabled in the student's situation, it need not provide it to the student here. Even Complainants admit in their Brief at page 19 that the student "has satisfied his graduation requirements. All that remains for schedule (sic) education is transition services"

Likewise, with regard to the argument that the student must be enrolled in general education classes and that he must be provided an entire day of schooling, Complainants cite to 34 C.F.R. § 300.110, which provides:

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

To reiterate, the student has already accumulated sufficient credits in all of these various areas to have met his graduation requirements. The subsequent decision to focus on transition needs partly in a school setting and partly in the community, for half of the day, was a decision made by the IEP team based on the student's unique needs and situation. This is not the case where the school made a unilateral decision or there was some general edict where students with enough credits to graduate may not spend a full day in school. Rather, this decision was made by the IEP team based on an individualized decision of the student's needs, that is to say, his unmet transition needs. Complainants cite no regulation or case standing for the proposition that a student with only certain non-graduation requirements remaining is entitled to a full day of general education classes.

Complainants next take issue with respect to certain prior written notices. First, they argue that reducing the duration of the school day constituted a change in placement such that the District was required to have provided a PWN describing the action proposed and explaining why it was proposed.

Certainly, procedures and related safeguards play an important role in the IDEA. The primary purpose of such safeguards is to afford parents a meaningful role in the decision making process regarding their disabled children's education. *See Rowley*, 458 U.S. at 208 ("Congress sought to protect individual children by providing for parental involvement . . ."). Procedure plays an important role in the IDEA. The main purpose of the procedural safeguards, as interpreted by the Supreme Court, is to afford parents a meaningful role in the decision-making process regarding their disabled children's education. *Id.*

Here, the relevant PWN provides that the student has met all of his credit requirements necessary for graduation, but that he continues to have unmet needs in the areas of adaptive behavior and employability to help him prepare for post-secondary expectations. The PWN indicated that the remaining areas of need had been identified through his re-evaluation. Because of this, the PWN noted that the student was to receive SDI in adaptive behavior and employability. He was also to receive 300 minutes

per week to develop his employability skills and an additional 300 minutes with a job coach.

Additionally, the PWN explains that the request for core academic instruction was denied “because the team believed focusing more on functional skills for [the student] in the community setting was appropriate.” The request for PE, sex ed., and lunch was likewise rejected because he had already taken such courses necessary for graduation. These descriptions were in the context and arose out of a student whose only identified remaining needs were adaptive behavior and employability in order to prepare him for life after high school. In fact, a re-evaluation that the IEP team reviewed did not even recommend any academic goals for the student. Rather, it recommended a shift to a post-secondary focus either on a job site or in the community.

However, I conclude that the PWN issued here satisfied all of the objectives of informing the parents of why changes were being made to the student’s education, and why certain options were rejected.

Next, Complainants point to federal regulations which provide that for children with disabilities who take alternate assessments aligned to alternate academic achievement standards, the IEP must include a description of benchmarks or short-term objectives. 34 C.F.R. § 300.320(a)(2)(ii). They argue the May 2020 IEP does not include such benchmarks or short-term objectives.

However, Iowa law only requires districtwide assessments for students grade three through eleven. *See Iowa Code § 256.7(21)(b)(2)(a)*. As such, this student is not required to take an alternate assessment, and the requirement of benchmarks and short-term objectives is simply inapplicable to this situation. Regardless, procedural violations result in the denial of a FAPE only if they impeded the student's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision making process, caused a deprivation of educational benefits. *See R.E. v. N.Y.C. Dep't of Educ.*, 694 F.3d 167, 190 (2d Cir. 2012). Any arguable procedural violation here was de minimis and did not constitute a denial of FAPE.

RULING AND ORDER

This Due Process Complaint is hereby dismissed. To the extent any of Complainants’ arguments are not otherwise discussed or addressed in this decision, they are deemed to be without merit.

Issued the 20th day of April, 2021.

A handwritten signature in cursive script that reads "David Lindgren".

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