

**STATE OF RHODE ISLAND DEPARTMENT OF EDUCATION
SPECIAL EDUCATION SPECIAL EDUCATION HEARING**

IN THE MATTER OF: :
 :
In Re-J.S.S.G. : **Complaint No. LL-21-09**
 :
v. :
 :
PROVIDENCE PUBLIC SCHOOLS :

DECISION

This decision is issued pursuant to the Individual with Disabilities Act (“IDEA”) (20 U.S.C. § 1400 *et seq.*), state special education law (R.I. Gen. § 16-24-1 *et seq.*) and the regulations promulgated under these enabling statutes.

The undersigned hearing officer was assigned to this matter by the State of Rhode Island Department of Education (“RIDE”) on August 3, 2021. According to RIDE, a decision is due “No later than October 17, 2021.” The parties mutually agreed to multiple hearing and decision extensions dates that ultimately required this decision to be issued no later than Wednesday, May 4, 2022. A procedural hearing was held on December 7, 2021 and substantive hearings thereafter on January 19 and 21, February 3, 6, 15, 16, and March 2 of 2022. Those present through the course of the hearing were:

For JSSG

SG-Parent

V. B. , Esq. Attorney

Dr. P. , Parent’s Expert
, Hamilton Teacher

For Providence

Dr. [REDACTED]
Executive director of Specialized Instruction

[REDACTED]
Acting Special Education Elementary Manager
[REDACTED] Kindergarten Teacher
[REDACTED], Special Educator

Position of the Parties:

Complainant: According to the Complainant (as referred to hereinafter as the “Parent” or “SG”), the Providence School Department failed to timely evaluate the Parent’s child (known as “JG” for this decision) for special education services despite repeated requests to do so that began in early 2019-2020 school year. Ultimately, Providence found JG eligible and developed her initial (“IEP”) in January of 2021 that was finalized in May of 2021. Through this process the Parent alleges that she repeatedly failed to receive notice of her procedural rights. Moreover, the IEP drafted by Providence did not provide the services needed to enable JG to receive a free appropriate public education (“FAPE”). As a result, SG unilaterally placed JG at the Hamilton School where she is purportedly making “slow and steady” progress. The Parent is seeking placement and reimbursement for her initial placement at the Hamilton School, and reimbursement of a neuropsychological examination and occupational therapy services she paid for. The Parent further alleges that the district retaliated against JG because her mother complained that JG was not receiving FAPE.

Respondent: Providence School Department disputes that the district received information and/or solicitation from the Parent asking for her child to be evaluated early in the school year of 2019=2020. It contends that it did not receive notice until early October 2020. Notwithstanding a lack of a referral, the district-initiated Response To Intervention (“RTI”) services to JG in January 2020 that were “unfortunately stymied by COVID-19 and hindered in part by consistent early releases of JG and some absences.” The district’s position is that it ultimately created an IEP “that was legally and reasonably sufficient to address [JG’s] needs and allow her to make progress, given her own particular circumstances.” It also alleges that it was never afforded the opportunity to implement an appropriate IEP because JG was educated virtually for the duration of 2020-2021.

The district also asserts that JG made progress in the Providence school system and only made “limited progress at Hamilton”. It also asserts that SG “was predetermined to send JG to Hamilton and had no intention of allowing the school to implement the IEP.” Lastly, it asserts that there is no evidence of any retaliatory conduct by anyone from the district.

Factual Findings

JG’s Early Childhood/Pre-School Years

1. JG was born on [REDACTED], 2014. Tr. 22. At that time her parents lived in Westerly. They moved to Hopkinton in 2015, which was part of the [REDACTED] School District. *Id.*

2. JG was referred to several early evaluations and did not pass “several” development tests, including a “partial/permanent hearing loss” and sensory issues. *See*, C. Ex. 2, Tr. At 24-26. SG also initiated evaluations. A neurodevelopmental assessment done in May of 2017 by Dr. [REDACTED] of Memorial Hospital that diagnosed JG with hyperkinesis and tantrum behaviors. Tr. 26, C. Ex. 5 at 12.

3. Dr. [REDACTED] analysis included a referral “to an occupational therapist to assess [JG’s] current skills.” C. Ex. 5 at 12, Tr. 32. Consequently, an outpatient occupational therapy evaluation was completed by [REDACTED] in June of 2017 that concluded JG has delayed self-help and fine motor skills, significant sensory processing and modulation challenges, deficits in strength and muscle tone, and delayed play skills.” C. Ex. No. 6, Tr. 32-36. The evaluation recommended OT. *Id.* JG thereafter went once a week to OT for an hour. Tr. 36, C. Ex. 111.

4. Also in June of 2018 Providence Center diagnosed JG with “adjustment disorder with mixed disturbance of emotions and conduct” and developed a treatment plan for her. C. Ex.12 at 11.

5. Starting in January of 2018, the ██████████ Regional School District performed outreach screenings on JG. In March of 2018 ██████████ made a special education referral for JG. Tr. 28, C. Ex.7,8. In fact, because she qualified for special education services JG would have had to go to the ██████████ Elementary School as opposed to the ██████████ School because the ██████████ school is where the district offered the services JG would need. Tr. 26.

6. SG thereafter turned down ██████████'s special education referral. The parties' memorandums of law argue that there is some significance to this action but this hearing officer does not believe so. What is significant is that a referral was made and that there is a record of it, not that it was turned down. What is also significant is that SG has established that she advocates for her child.

7. JG's school records from ██████████ from February of 2018 indicate she was under the care of a neurodevelopmental pediatrician, was doing occupational therapy, has sensory processing disorder, tantrum defiant disorder, trouble regulating emotions, gross motor skills were "off", and she was also waiting for a physical therapy referral. C. Ex. 8 at 14.

8. Several months later in 2018 SG's family moved to Providence, and in July SG received an email from the Providence school system saying, "they had a preschool enrollment lottery opening up and you could go online and put your child's information in to have them put into the lottery." Tr. 29. JG was subsequently selected for the Imagine Preschool in Providence and started there in September 2018.¹ Tr.30, C. Ex.10.

9. JG failed the district's initial General Development and Speech/Language screening the first time but subsequently passed. C. Ex. 11.

¹ In her testimony, ██████████ tries to distance the district from this pre-school because it is state funded. However, SG's original email about this pre-school came from Providence and SG reasonably thought it was part of Providence because" of that email. Tr. 31. Regardless, this does not relieve Providence of their child find obligations.

10. On November 29, 2018, examiner ██████████ completed a private occupational re-evaluation on JG. C. Ex. 14 at 1. From the record it appears that Providence did not have notice of this re-evaluation.

11. According to JG's teacher in pre-school, by the end of the 2018 school year it was "noted that she was behind her peers by the end of the year." Tr. 30-31. She could not write her name, she did not know the alphabet, and could not count past five. *Id.* A teacher from the preschool suggested that SG should consider having JG evaluated because "she was behind her peers." Tr. 31. As a result, SG and her then husband consulted a private tutor who "cautioned against tutoring at that point." Tr. 31-32.

Kindergarten/Beginning of COVID

12. In kindergarten registration documents SG informed Providence that JG has a "sensory processing disorder" that she attends weekly OT for this disorder, . C. Ex.15 at 1-4.

13. When asked if she has a practice of reviewing student records, JG's kindergarten teacher ██████████ said, "if we have access to them I do." Tr. 641. In this instance, Ms. ██████████ testified that she did not recall whether she reviewed JG's school records but was aware that she was receiving OT because JG had to leave school "about an hour-and-a-half early every Tuesday." Tr. 641-642.

14. According to Dr. ██████████ when a student transfers from one school district to another, "the [school] registration department would get records, school-based records." Tr. 617. It is a "joint responsibility" between the two school districts involved in the transfer. *Id.*

15. When asked at the hearing if she reviewed JG's kindergarten registration records Ms. ██████████, JG's resource teacher said that she did not have access to them. Tr. 710. She further did not know that ██████████ had wanted to evaluate JG. *Id.* It was not communicated to her. *Id.* She

also did not know that JG was receiving OT, nor did she have SG's initial neurodevelopmental report. *Id.* She had "none of it." Tr. 711. Ms. ██████ testified that if she had had this information it "may have been" significant to her, but she did not. Tr. 710-711.

16. From the record it appears that neither Ms. ██████ and Ms. ██████ had access to and therefore did not review JG's school records from ██████, JG's pre-school, and Providence's own registration records.

17. SG asserts that she spoke to ██████ after orientation in August of 2019 at the ██████ School and gave her a copy of JG's neurodevelopmental report. Tr. 38. Ms. ██████ denies that occurred. She said that "she probably said" hello to JG's parents but that SG never indicated that JG should be referred to special education nor did SG provide her with any documents about JG. Tr. 627-628.

18. According to SG, when JG went to kindergarten, she "had a hard time" getting dropped off in the morning. Tr. 39-40. "There were a lot of tears and trouble separating." *Id.* "There were loud noises so SG purchased noise cancelling headphones and some days she wore a weighted vest on to go in, which the school would provide for her through the aid in the morning, and then she had a lot of accidents, she would wet herself frequently. She had two changes of clothes in her bag but sometimes she would use both...and the school nurse would call asking for additional clothes." Tr. 39-40.

19. JG and her brother went to school every morning together. Tr. 298. At SG's request he introduced JG to "Ms. ██████ at the door" of the school. SG explained JG's anxiety to her. *Id.* She said that JG "gets hysterical...she doesn't want to separate....And it became a daily occurrence." *Id.* When Ms. ██████ was not there ██████ was. *Id.*

20. Ms. [REDACTED] was not aware of these issues. She did not know that school personnel were regularly walking JG into school and she was also not aware that JG has a weighted vest. Tr. 659-660. Nor did she recall JG having frequent toileting accidents while in school, or the fact that JG had extra clothes sent to school to deal with toileting accidents. Tr. 660-661.

21. In a parent/teacher conference in November Ms. [REDACTED] showed SG JG's assessments and talked about how she was doing in class. Tr. 643. She showed SG how JG "was doing in class...this is where she is, this is kind of where she needs to be." Tr. 645. It appears that around this time Ms. [REDACTED] began to give JG extra help in class as well as referring her to RTI. Tr. 646-647. In the end of December of 2019 Ms. [REDACTED] went to "find the next available [RTI] appointment, and...[she thinks she] scheduled it for January 17, 2020. Tr. 648.

22. In an email exchange in December of 2020 SG asserts that she "provided a copy of [the neurodevelopmental report] to the school when [JG] began in the Fall of 2019" and [REDACTED] speech language pathologist for the district, responds by saying that "is what I thought." C. Ex. 40.

23. There is certainly a factual dispute between SG and JG's teachers regarding whether SG gave Providence a copy of the neuropsychological report in the Fall of 2019. In fact, in her testimony SG goes into great detail about the numerous specific times that she gave the report to JG's teachers. However, in their testimony both Ms. [REDACTED] and Ms. [REDACTED] adamantly deny receiving copies in the Fall of 2019. These multiple versions of the facts cannot be reconciled. Nevertheless, I find these witnesses to be sincere and credible in their accounts. I assume their testimony has to do with their perspective, as opposed to their credibility. Accordingly, I cannot find as a matter of fact that SG did in fact provide multiple copies of the report to Providence in the Fall of 2019.

24. The district began providing RTI to JG in January of 2020 until schools closed due to COVID. Tr.43,701-702. JG received tier III RTI from January 9, 2020- March 9, 2020. C. Ex. 41. At or around that time, the measurable data on JG concluded that JG “was able to identify 6 uppercase letters of the alphabet.” C. Ex. 41. “Sound production” and reading were areas of concern. *Id.*

25. When students came back it appears that RTI was not offered by the district. Students were given packets which they would have to return to school to drop off and pick up more work before switching to virtual where Ms. █████ presented a Google classroom for the kids to do instead. Tr. 46.

26. From September 2019 to March of 2020 SG did not see any progress in JG’s education. She “did not know her letters, she couldn’t write her full name correctly...without assistance...She couldn’t count past ten when she left kindergarten.” Tr. 45. So, SG was “stunned” to learn that JG was promoted to first grade because SG did not think she was academically ready for it.” Tr. 45. “[S]he really struggled with math and having to write letters.” *Id.* JG’s end of the year kindergarten report card stated she was below level 1 for reading in each of the four quarters of the school year. C. Ex.17.

1st Grade in Providence’s Virtual Learning Academy

27. JG attended Providence’s virtual academy for first grade in September of 2020.² She was having “trouble”. She did not know all her letters, she could not count past 14, “math was challenging”, she “struggled” to write a sentence, and she did not know the sounds of all of the

² SG had opted to put JG in the virtual academy rather than send her to school in the Fall of 2020. SG said that her “background is in public health and the science just spoke that there would be a second wave of COVID hitting and at some point ...its going to hit the kids ...[and] just having family die from COVID it didn’t make sense to...risk sending my kids into a hot zone..., so I made the choice to keep them home.” Tr. 59.

letters. Instead, she focused on drawing pictures and then trying to write down whatever she could.
Tr. 50.

28. Providence made no effort to provide RTI or other services to JG because “she was not in school” according to Ms. [REDACTED]. She “was not servicing virtual students.” Tr. 713.

29. SG asked Ms. [REDACTED], JG’s classroom teacher “what the process is to have JG evaluated because [SG] felt that [JG] had dyslexia.” Tr. 44, C. Ex. 19. She mentioned their family history of dyslexia and that JG was screened in [REDACTED]. Tr. 118. She said that “[e]very morning when we are doing the literacy portion of JG’s schedule, she ends up in tears and get hysterical at times.” C. Ex. 19.

30. SG noted to Ms. [REDACTED] “there were several times [JG] would get up to go to the bathroom. She would go like four or five times in the morning.” She would also jump on while on virtual learning “to run to the bathroom and then she would come back at the time (she had to be called” and then go again. Tr. 51. Ms. [REDACTED] responded by thanking SG or letting her know about JG’s history. Tr. 118.

31. SG had a parent teacher conference with Ms. [REDACTED] at which Ms. [REDACTED] informed her that she was using a kindergarten level book with JG and JG could not read sentences in the book. Tr. 88. She also said that JG “only knew 18 out of the 60 sight words ...and needed to know a minimum of 25 before the end of the year, and that she was still really struggling with knowing the full alphabet and letter sounds, and that she felt that more resource time was needed...and that if Providence couldn’t offer the services that they could pay for them if we received outside services.” She further said that SG needed to request that “because JG was not making progress to be on track for the year.” Tr. 89. Consequently, SG contacted Ms. [REDACTED] but Ms. [REDACTED] stopped responding to her. Instead, Ms. [REDACTED] started to communicate through

JG. But SG sent several emails asking her for clarification and specifically asking why JG is being asked to relay a message to SG. Tr. 90-91. But she continued to do so. *Id.*

Referral And Evaluations

32. On October 2, 2020 SG sent Mrs. [REDACTED] an email requesting that JG be evaluated. C. Ex. 19. In her email she expressed concern that JG “ends up in tears and gets hysterical at times” as well as the fact that she was previously “working with the staff at Vartan to have JG tested for dyslexia.” *Id.* She let the teacher know that JG was previously referred by [REDACTED] and wanted to know what options were available to have her screened in Providence. *Id.* Mrs. [REDACTED] promptly generated a Referral on October 7, 2020. C. Ex. 24.

33. In an email change on October 9, 2020 SG informed Ms. [REDACTED] that JG will be receiving out of school tutoring two days per week. C. Ex. 20.

34. According to this Referral, there was a “Intervention Team Meeting” on February 21, 2020 in which the OT and speech pathologist recommended evaluations for JG. *Id.* However, there is no record of the meeting. Moreover, it appears from the record that these evaluations were not completed. The meeting notes also noted that JG “has sensory processing disorder and ...[that a] neuropsych was done when [JG] was 3.” C. Ex. 24.

35. An email exchange between SG and Ms. [REDACTED] in early October demonstrated the challenges of the pandemic. In it, Ms. [REDACTED] empathically acknowledges JG’s “daily meltdowns”. C. Ex. 20. SG does not want to overwhelm JG with too much computer time and Ms. [REDACTED] knows that zoom meetings can be “tough”. *Id.*

36. Principal [REDACTED] informed SG that he had a referral meeting in his calendar for October 26, 2020. C. Ex. No. 25 and [REDACTED] emailed SG a Prior Written Notice on that day. C. Ex. No. 28. C. Ex. No. 30. [REDACTED]

██ were present at the zoom meeting. Tr. 53 C. Ex. No. 29.

37. At the meeting, SG was informed for the first time that JG’s attendance was an issue. Tr. 122. She was also informed for the first time that JG was receiving RTI. Tr. 54-55, 61-62.

38. According to meeting notes JG’s “intelligibility was decreased” from last year, she was “struggling with her writing putting sounds with words”, she was reading at a Kindergarten level, and she does not know many “Power Words”. C. Ex. No. 29. This, despite the fact that she had a private tutor. *Id.* It was also noted that she had a neurologist. However, no one at the meeting had a copy of JG’s neurodevelopmental assessment. Tr. 54.

39. Evaluation team responsibilities were determined. ██████████ was to do a social history, and ██████████, ██████████ and ██████████ were all to do evaluations. C. Ex. No. 29. ██████████ was also supposed to start tier three interventions. *Id.* After the evaluations were completed, the team was supposed to meet again on December 6, 2020. Tr. 62-63.

40. On the same day of the meeting there was an email exchange between ██████████ and SG that resulted in SG providing consent for “permission to evaluate”. C. Ex. 28.

41. Ms. ██████████ subsequently sent Ms. ██████████ an email on October 28, 2020 asking her to start RTI interventions. These subsequently started on November 9, 2020. C. Ex. 32,41.

42. Due to COVID challenges there was an approximate two-and-a-half week delay in getting JG evaluated. Tr. 59-66. JG’s OT evaluation was completed on November 9, 2020, and direct services by the district’s OT staff were recommended. C. Ex. No. 35. Her speech language

evaluation was done on the same day and services were not recommended; however, “strategies and home program” was. C. Ex. No. 37.

43. In an email exchange with ██████████ on December 7, 2020, SG informed Ms. ██████████ that JG would have a neuropsychological evaluation on January 11th or 12th. C. Ex. No. 40.

44. On December 10, 2020 the district completed an Intervention Progress Report. C. Ex. No. 41. Although distance learning presented unique challenges for JG (as I am sure all students), the progress report stated that students “at this stage of the first grade are expected to decode cvc words with initial fluency and have a mastery with all letters and their respective sounds.” *Id.* However, in JG’s case she “has not demonstrated the ability to read sounds for all letters...she was able to identify and read the sound for 13 letters, and she could identify 22 letters only.” *Id.* The progress report acknowledges that JG “has attended most zooms” but concluded she “has made insufficient progress” and it “recommended that she receive specialized services in the area of reading.” *Id.*

45. On December 14, 2020, the district notified SG that it wanted to change the date of the special education team meeting “to later in January when we have a copy of the neuropsychological report. C. Ex. No. 42. The next day SG sent what is purportedly another copy of her initial neuropsychological report and JG’s OT re-evaluation to Ms. ██████████. C. Ex. No. 43.

46. On December 15, 2020 ██████████ conducted an initial social assessment. C. Ex. 47. SG informed Ms. ██████████ about her family’s history, that JG has anxiety, JG’s physical/developmental history, explained JG’s absences. Tr. 68,146-148. SG stated that she is concerned with JG’s reading level not progressing, particularly during this pandemic. C. Ex. No. 47. She further said that JG “is getting frustrated and discouraged.” *Id.* In the interview process SG let Ms. ██████████ know about JG’s sensory processing issues. Tr. 147.

JG's Initial IEP

47. The evaluation team met on January 11, 2021. C. Ex. 57. The IEP team reviewed JG's OT evaluation scores and determined she qualified for OT. *Id.* Meeting notes also said that JG "had shown growth with generating rhyming works. 6 letters identified last year. On 12/11 she can now identify 22 letters and read the sound for 13 but limited progress." SG said that she had concerns about JG's reading ability, that she has outside OT services, that her "overall expressive and receptive language scores [are] in the average range". *Id.* The team not only determined that JG "qualifies for OT" but that she also "qualifies under label Developmental Delay" for education and related services. C. Ex. 56. The meeting notes also state that SG "sent in neurodevelopment report" that was completed three (3) years ago. *Id.*

48. The initial IEP provided special education services in the form of "research based, multi-sensory, specially designed instruction in the area of literacy .5 hours a day, 3 days a week, 4 weeks a year. C. Ex. 60. If provided related services in the form of "research based multi-sensory Occupational Therapy services in small group pull out and or in classroom to improve fine motor, visual motor and motor coordination skills as related to Academic Environment" .5 hours a day, 2 days a week, 4 weeks a month. *Id.* It also provided supplemental aids and modifications in the form a gripper, weighted pencil, frequent movement breaks, breaking tasks down into single steps, extended time, and "read written math" to JG. *Id.*

49. According to [REDACTED], Providence did not contemplate additional evaluations at that meeting because SG was in the process of completing an independent neuropsychological evaluation for JG and Providence was waiting for its results. Tr. 726-727.

50. The parties met again on January 21st. C. Ex. No. 59. According to the meeting notes JG's visual perception skills were in the below average to low range, she was able to read

the sounds of 11 letters, she was also able to rhyme for a one syllable word in 3 of 5 trials 75% of the time. C. Ex. No. 58. For services JG was to receive OT twice a week and special education services in literacy three times a week for 30 minutes via zoom. *Id.*

51. According to SG, she did not receive a copy of the draft IEP at the meeting and was subsequently given a copy several hours after the meeting by email. Tr. 76. Several days later on February 3, 2021 she was given a hard copy and was told that “she had to sign for [the IEP] or a prior written notice.” Tr. 77. However, she said “was never explicitly told [she] had to sign it” *Id.* In addition, JG continued to receive OT and reading instruction services. *Id.*

52. On March 1, 2021, ██████████ sent an email to SG asking her to “send in the forms I sent home to be signed” but SG refused. C. Ex. No. 63. SG said that after reviewing JG’s recently completed neuropsychological evaluation and speaking to Dr. ██████████ she thought that JG should receive more services. *Id.* According to SG, she was never told of the consequences of not signing the IEP. Tr. 77. Moreover, according to the email exchange, JG’s resource “Services continue”. *Id.*

53. Because SG continued to interact with Providence in order to develop JG’s IEP, even though she refused to sign JG’s initial IEP, I find that SG was trying in good faith to work with Providence to develop and provide the special education services needed to allow her child to be adequately educated.

54. On March 1st SG received JG’s neuropsychological examination results from Dr. ██████████ and emailed them to the school. A “couple of hours later” the district emailed her back and asked that she sign the initial IEP. SG was told that the district “needed that”, but SG said no. She was not going to sign until after the neuropsychological exam results were reviewed. She also felt that JG “needed more services” so she wanted another meeting to add those services.

Notwithstanding SG's decision not to sign the IEP, according to Ms. [REDACTED] JG would continue to receive the services she was receiving under RTI. Tr. 78.

55. Dr. [REDACTED] evaluation reviewed JG's family history, assessed her current functioning, completed a number of tests that the district could have also authorized, had input from her teachers, her mother, and included the doctor's own behavioral observations. C. Ex. 62. From this thorough review and evaluation Dr. [REDACTED] was able to diagnose JG with Attention-Deficit Hyperactivity disorder, Combined Presentation, General Anxiety Disorder, Specific Learning Disorder, with impairment in reading, Specific Learning Disorder, with impairment in written expression, and Specific Learning Disorder with Impairment in mathematics. *Id.* at 1-3.

56. The parties met again on March 29th to review Dr. [REDACTED] independent neuropsychological evaluation. C. Ex. No. 67. According to meeting notes the parties met for one half hour. C. Ex. No. 66. In that half hour it appears a lot of ground was covered. *Id.* According to SG the only individuals at the meeting were [REDACTED] and her. Ms. [REDACTED] said that the meeting might need to be rescheduled because she did not know where the other participants were. In the interim she texted them and Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED] ended up joining. Ms. [REDACTED] was asked to read the neuropsych into the record but did not have a copy, so Ms. [REDACTED] emailed it to her. Tr. 79-80. This "was the first time that Lee Ann was reading the report." *Id.*

57. In her testimony, Ms. [REDACTED] did not disagree with Dr. [REDACTED] diagnosis of attention deficit hyperactivity disorder. She further did not disagree with the diagnosis of specific learning disorder with an impairment in reading. She also agreed that JG had an impairment in written expression and said it was part of the IEP plan. However, she acknowledged that there was no additional service time added to address this deficiency. Tr. 727-728.

58. Ms. ██████ “did not see any evidence of anxiety.” *Id.* According to SG however, the issue was discussed. Tr. 81-82,98. And according to the meeting notes, JG “will go to the bathroom a lot due to anxiety.” C. Ex. 66. In one instance when JG came into school she had to go to the bathroom and Ms. ██████ had to find her one because of COVID challenges she could not go to a bathroom of the general population. Tr. 736.

59. Ms. ██████ did disagree with providing JG with additional services because she thought to put a student with ADHD virtually one-on-one for longer than 30 minutes you will have the student “tune me out”. Tr. 732-733.

60. Both Ms. ██████ and SG agreed that JG was not getting what she should out of the virtual resource and that both thought it would be better if JG completed her sessions with Ms. ██████ in person. Tr. 83, 732-735.

61. In fact, Ms. ██████ said that SG had signed JG up for the virtual academy and “would have liked to have seen her in school, but she wasn’t.” Tr. 734-735. SG talked to her about coming in and she had a conversation with her principal about it, but the principal said, “it is not a good idea, she is a virtual student, we’re in COVID.” Tr. 735. However, because her mother had signed JG up in the virtual learning academy and Providence did not offer a “hybrid” model this did not occur. Tr. 734-735.

62. Even though JG could not complete her resource with Ms. ██████ in school she was completing her OT services there. Tr. 81-83, C. Ex 66.

63. According to SG, Ms. ██████ said that JG was “receiving what’s available to her”. Tr. 98. However, SG thought JG needed more than what she was getting because of her lack of development as well as the recommendations in Dr. ██████ report. Tr. 99,100. The team said that they would instruct JG’s classroom teacher to perform one-on-one spelling tests/quizzes as

well as offer her the ability get up while on Zoom to stretch halfway through her session. Ms. [REDACTED] and Ms. [REDACTED] thought that JG's ability to concentrate beyond twenty minutes was challenging. Tr. 99.

64. According to the meeting notes, the IEP team recommended "1 on 1 reading program, small group expression with writing program, social worker on weekly basis, break with tasks when in school accommodations recommended; will add to iep on supplementary page...mom should have her see a child psychologist." C. ex. 66.

65. On April 29, 2021, SG emailed Ms. [REDACTED] to ask when she would receive a copy of JG's IEP. C. Ex. 68. Ms. [REDACTED] responded on May 3, 2021, stating that she could get SG a copy by the end of the week. *Id.* Around this time SG processed her children online to go back to school. In fact, someone actually walked her through the process and said, "somebody else would contact" her but she "never got contacted by Providence for either of [her] kids to return in person." Tr. 86.

66. At a parent/teacher conference in May with Ms. [REDACTED], Ms. [REDACTED] shared with SG that a couple of days prior she had gone over a kindergarten level book with JG in which JG could not read specific sentences. Tr. 88-89. Ms. [REDACTED] further informed SG that JG "only knew 18 out of the 60 sight words ... and she needed to know a minimum of 25 before the end of the year, and that she was still really struggling with knowing the full alphabet and letter sounds, and that she felt more resource time was needed, 30 minutes/three times a week was not adequate for her." Tr. 89.

67. By this time SG hired legal counsel because "too much time had gone by. We essentially had gone through another whole school year and JG had not really made any progress." Tr. 85, C. Ex. 69.

68. To that point SG had not recalled “receiving anything else” other than Prior Written Notice (“PWN”) form without any information on procedural safeguards. Tr. 323.

69. The October 26, 2020 PWN supposedly given to SG is not signed but it does check off the fact that a copy of the procedural safeguards were included the notice. However, they are not in the record. The January 11, 2021 PWN is also unsigned and it does not check off that a copy of procedural safeguards were included with it. The January 21, 2021 and March 29, 2021 PWNs are both only one page. There is no information about whether the Parent received and/or signed it, or whether a copy of the procedural safeguards was included with it.

70. From this information and from how SG acted up until the time she hired legal counsel I find that Providence did not make her aware of her procedural due process rights and that she did not know them.

71. On May 5, 2021 the law firm of [REDACTED] sent a letter to [REDACTED], Providence’s Director of Student Supports and Services alleging numerous failures by the district and informing it that SG “is considering unilateral placement” of JG. C. Ex. 69. SG then got a draft “initial” IEP on May 7, 2021, which, according to her “was essentially the same thing that [she] got back in January.” Tr. 85, C. Ex.70,71,72. It appears that new accommodations were added, but not new services. *Id.*

72. In an email to [REDACTED], Manager of Specialized Instruction and Services Elementary Schools for the Providence School Department, Ms. [REDACTED] stated, “I have had regular consistent communication with this parent as I have continued to service her since the signing of the referral. She has also been receiving walk-OT from Mrs. [REDACTED]. Both of us have been accommodating with this family regarding service time; scheduling around their trips, our

team meetings, coverage, illness on both ends...Lately, my zooms with her generally include weekly modifications to ensure her service. C. Ex. 74.

73. In her testimony however, SG said that JG “lost about 33 percent of her service time specifically due to Rachel canceling.” Tr. 88. She submitted an exhibit that listed JG’s resource zoom schedule along with each session’s status. Tr. 94. Ms. ██████ was “furious and deeply offended by this” document. Tr. 684. In several documents and meeting notes Providence suggested that attendance was a problem. However, in other Providence records attendance did not appear to be an issue.

74. The pandemic was challenging for both staff and parents and I am sure there were some instances where neither party could make it, but there is insufficient evidence to either prove or support the Parent’s allegation that Ms. ██████ cancelled as much as it is alleged or conclude that “unexcused” absences were a problem for JG. C. Ex. 90.

75. I find that from the time JG entered into the Providence school system until shortly before SG hired legal counsel in May of 2021 she was working in good faith with Providence under exceptionally challenging circumstances to have her child educated through the Providence school system. I further find that she was not aware of her due process procedural rights during that time. Accordingly, I reject Providence’s assertion that SG “simply wants her daughter to be at Hamilton, no matter what.” R. Reply Memorandum of Law at 23.

76. On May 13, 2021 thereafter Providence’s legal counsel emailed alleging that SG did not provide sign and/or provide consent to allow for implementation of the IEP. C. Ex. 75. On May 21, 2021 SG’s attorney provided consent.

77. Dr. ██████ sent a follow up letter regarding JG on June 8, 2021 outlining his concerns with JG’s proposed IEP. C. Ex. 77. He was concerned about what reading program the

district would employ and recommended the Orton-Gillingham reading model; said that he thinks “it is important for the implemented program to be phonics based..., explicit..., multi-sensory..., sequential... and repetitive.” *Id.* Because of the degree of JG’s disability and her anxiety, he recommended that JG “be taught one hour a day on a one-to-one basis” (as opposed to a half-hour session, three days per week). *Id.* Dr. ██████ was concerned that if there were only ½ hour lessons it would slow “the progress in a child who is already considerably behind.” *Id.* Anything less than “what is recommended...will limit her progress.” *Id.*

78. Dr. ██████ letter further said that the “IEP does not address written expression.” *Id.* However, Ms. ██████ testified that the written expression is embedded in the reading portion. CITE. This hearing officer concludes that there is a written expression included in JG’s draft IEP.

79. Dr. ██████ letter also states that JG’s “IEP does not provide recommendations for JG’s anxiety.” C. Ex. 77. He concluded that her anxiety is “clearly” impacting her studies, “specifically with regard to schoolwork. She regularly becomes frustrated and upset by her struggles and expresses fear when she hears the word ‘test’.” *Id.*

80. Lastly, Dr. ██████ said that “Some” of his classroom accommodations were included in JG’s IEP but he recommends that “the list be reviewed for further additions. *Id.*

81. The parties subsequently convened an IEP meeting on June 10, 2021. C. Ex. 78, 79. According to the meeting notes the IEP team received Dr. ██████ “letter with recommendations”. *Id.* Because the IEP team did not include most of Dr. ██████ recommendations SG informed the team that she is considering an out of district placement at the ██████ School. Ms. ██████ said that JG could read 2 sight words in October 2020, in June 2021 she can identify all letters, read cvc words in reading and writing, and she has 35 sight words.

It was also noted that in kindergarten JG had “problems entering into school and wore a weighted vest.” C. Ex. 79.

82. An Intervention Progress Report for OT content area was completed on June 15, 2021 that graded her 15% under where she is expected to be, but that said that she was “making steady progress” in some areas. C. Ex. No. 81.

83. The parties held yet another IEP on June 16, 2021. C. Ex. No. 82,83,84. At the meeting Ms. [REDACTED] reported that she “has seen progress with” JG. C. Ex. No. 83. Ms. [REDACTED] said that she “does not see anxiety or crying. She notes attentional issues and needs for redirection at times.” *Id.* The notes also state that JG’s “writing is an area of weakness and she needs support.” *Id.*

84. Portions of the recording for this meeting were audible and some were not. C. Ex. 82. Relevant portions that were audible included a representative of Providence stating that in “a perfect world I would give her more time for one-on-one but this year had been [inaudible]” that the teachers in the VLA “have made this work”; that SG “choose the VLA”; the VLA “is not the best setting for kids who are struggling that’s for sure”; and, that the schools were “shut down in March and that is why [JG] was not evaluated”. *Id.*

85. Also, at the meeting a Providence representative (I assume it is [REDACTED]) presented specific statistical information and she said that JG has “made tremendous progress”. However, a baseline was not identified for this progress. C. Ex. No. 82. Providence declined to make any additional modifications that were requested by SG. C. Ex. No. 82,86.

86. The parties met yet again on June 26, 2021 and on July 12, 2021. At these meetings Providence detailed JG’s progress. C. Ex. 87, 99. During this time Providence also provided JG’s progress on her STAR scores, i-ready scores, and a lexia report. C. Ex. 88, 89, 91, 92. While the

net of this information appears to suggest that JG is making progress, it cannot be stated for sure because, as the Parent's expert commented, there were "very limited data points" so it is difficult to analyze. Tr. 374.

87. SG also disagreed with Providence's assessment. According to her, JG "couldn't count past 14, and she still didn't know the full alphabet, yet, she was promoted to second grade. So to me it just make sense to seek an institution or another school that would offer services that were specialized to a child with ADHD and dyslexia and the sensory processing disorder, the anxiety component and the executive function issues." Tr. 92.

88. JG's first grade report card is marked with either "below level" or "does not meet" marks for reading and writing for almost every quarter. In language and speaking/listening her marks are either "does not meet" or "approaches" the standard. C. Ex. 90.

89. On June 28, 2021 Ms. [REDACTED] completed school questionnaire authored by the Tufts Children's Hospital. C. Ex. 133. She stated that because JG was part of a virtual classroom for the entire school year there were certain questions, she "was not able to answer or expound on because [she] did not have enough information." Id. at 12. Nevertheless, she did report that JG was below standards for reading and writing.

90. SG paid for OT services, Dr. [REDACTED] neuropsychological evaluation, and she for private tutoring for JG in her kindergarten and first grade school years. Tr. 202-203, C. Ex. No. 111,112, 114.

91. SG got to the point where she did not feel that Providence was fulfilling JG's educational needs. JG did not know her letters, she did know sounds, there was "no distinction between upper case or lower case, so what did she know." Tr. 91. She could not count past 14 and

she still did not know the alphabet, yet she was promoted to second grade. Tr. 92. She also thought that there was regression. Tr. 91.

JG's Education at the Hamilton School

92. As a result, SG sought out a school that specialized in dealing with children with ADHD, dyslexia, sensory processing, anxiety, and executive functions. Tr. 91. And so, she put JG at the Hamilton School.

93. The Hamilton Institute completed a reading and writing assessment of JG on May 13, 2021 and concluded that she “would be a possible candidate for Hamilton first grade.” C. Ex. 117.

94. JG's teacher at the Hamilton School is [REDACTED]. Ms. [REDACTED] graduated from Brown University's MAT program in 2010; she taught in the Turner School, Central Falls, then the Highlander public charter school from 2010-2017 where she “worked with a lot of students with IEPs” and the Hamilton school since then. January 21, 2022, Tr. 222. She holds a certification from the state of Rhode Island for grades 1-6 and completed all of her Orton-Gillingham training and classroom requirements but she has not received her certificate. *Id.* At the hearing she discussed in-depth the teaching method that OG uses and its supposed success, particularly with students with dyslexia. Tr. 225-226. She teaches her students in small groups and addresses their executive function and anxiety challenges. Tr. 226-228. Based on her resume and testimony I find that Ms. [REDACTED]s qualified to teach JG. C. Ex. No. 131.

95. From her testimony, it is evident to this hearing officer that Ms. [REDACTED] certainly knows her material. Specifically, her understanding of the Predictive Assessment for Reading and the San Diego Quick assessment screening tools and how it measured JG's progress was impressive. Tr. 233-248. It was also unchallenged by the district.

96. On September 30, 2021 JG completed a student assessment at Hamilton. C. Ex. 118. She could not identify the sound of letters e, d, y, o, k, z, x, and b. Tr. 247. According to Ms. [REDACTED] “that’s a significant amount for a kid who had already gone through a first grade year.” *Id.* According to Ms. [REDACTED], “there was no hesitation that were she to come here [Hamilton] we would start [her] again at first grade.” Tr. 248.

97. JG has sensory processing and general anxiety issues. She also has some “pretty intense needs in terms of language.” Tr. 231, 244.

98. JG is a complex learner, anxious, has “attentional variations”. “So right from the beginning...we have a very clear schedule. We know exactly what we are doing, when we’re doing it, and here’s what’s expected of you. Tr. 229. As a consequence, JG was working in a “safe space”. *Id.*

99. At the Hamilton School JG’s homeroom and academic classes are with a small group of students. Tr. 235. However, the other parts of her day she is with the first graders from Wheeler. Tr. 237.

100. The Hamilton School is “a school within a school” model. Tr. 237. As such, JG’s homeroom and academic classes are with Ms. [REDACTED] in a “very small”, “close knit” classroom and for other parts of her day she transitions to school at Wheeler. Tr. 237.

101. JG is one (1) of four (4) students in Ms. [REDACTED] class. Tr. 226.

102. Hamilton employs the Orton-Gillingham reading model. According to Ms. [REDACTED] “Orton-Gillingham is the premier method of teaching students with dyslexia. It is a diagnostic prescriptive, and it’s not a program. It’s an approach.” Tr. 225. Orton-Gillingham addresses a student’s anxiety and executive functioning. Tr. 226-227. The way it works is that

“kids are really met at their need as opposed to...moving on to the next unit when it’s time to move on.” Tr. 274.

103. The program is “tuned to the specific students’ needs.... So if they haven’t mastered [a] skill, if they’re not ready to go, we stay there. So that by the time they get up to second and third and fourth grade, their knowledge is so solid and steady that they are really able to flourish.” Tr. 226.

104. In JG’s case she was initially really nervous but within a matter of months she was independent and making gains. Tr. 229-230.

105. Hamilton incorporates occupational therapy “methods” into their teaching. Tr. 230. The school has a consulting occupational therapist who evaluated JG and then the school appears to implement her recommendations. Tr. 249.

106. Since going to Hamilton JG has increased her working memory, her reading comprehension, and her rapid naming ability. JG has made “slow and steady” progress in reading. Tr. 235, 243, 272. C. Ex. 127.

107. Hamilton administered the Predictive Assessment Reading test on August 1, 2021 and again on January 3, 2022. C. Ex. 137. Ms. ██████ said that the expectation for the Fall versus the Winter scores is different, “but even given those different measures, she [JG] is growing throughout.” Tr. 271-272.

108. Ms. ██████ testified that JG is working well with the other kids in class, enjoys spending time with them, social interactions are now “really huge skills of hers”. Tr. 251, 254. Academically she is making “slow and steady” progress, which Ms. ██████ states is “as to be expected for a student with her profile; but she is a hundred percent making process. Part of it I think is that because her anxiety is alleviated..... you can see real, actual, beautiful work that’s

happening in her growth.” Tr. 255. Ms. ██████ anticipates that JG will be able to appropriately move on to Grade 2 at this end of the school year. *Id.*

109. SG feels like JG lost two years in Providence but now she is “a totally different child now. She’s making tremendous progress.” Tr. 93. Her written and verbal skills have improved, her entire anxiety situation has “unfolded into itself” and she has not had an accident at school since October. She walks herself into school and is proud of herself to go in. Tr. 94.

110. According to SG, JG had “made tremendous progress. Tr. 303. She wants to read, she is “actively using her strategies...she physically asked for books...We don’t see her as an anxious child. She doesn’t have crying fits going to school.” Tr. 303-304.

The Expert Witnesses

111. Both parties objected to the testimony of each other’s expert witnesses on the basis of conflict. In the hearing I rejected both objections and found Dr. ██████ and Dr. ██████ qualified as experts and that neither has a conflict and affirm that decision here based on the transcripts.

112. Dr. ██████ testified that the screening completed by Providence’s child outreach coordinator (C. Ex. 9) determined that JG did not need to be referred to special education. Tr. 452. She also reviewed the Imagine pre-school parent questionnaire and a progress report and concluded that there is nothing in the exhibit that indicates JG needs special education. Tr. 454-456. In fact, “there is nothing that jumps out at [her] that is an area of immediate concern. It’s interesting that there is nothing about anxiety.” Tr. 456.

113. According to Dr. ██████, the district did not violate its child find obligations because it is “very rare that [the district] would immediately refer a student in kindergarten because they are all at such different levels developmentally.” Tr. 492. “Certainly, all along we are

assessing and evaluating and taking baseline assessments, and it does appear that the teacher had concerns about her academically, and I would agree appropriately brought her to MTSS in January.” Tr. 493. “So based on my review of the record, Providence, in my opinion, responded in an appropriate amount of time, not jumping too quick to a referral, but also not waiting too long for J.G. to fall behind.” Tr. 493. However, Dr. ██████ said that pursuant to its obligations under child find, that “in this particular case there were multiple opportunities to recognize this was a child that there was a concern, pretty significant concerns.” Tr. 370.

114. Dr. ██████ testified that the reason for the RTI process is “how we’re finding students eligible for special education.” If you provide services outside of SPED process and students respond, then you don’t necessarily qualify them for special ed. If you have closed the gap. Tr. 352. The recommendations to have a child in RTI is usually a six to eight week interval. Tr. 353. However, at any point during the RTI process the district can make a referral. Tr. 363.

115. Dr. ██████ testified that the accepted model for tier III RTI intervention is six to eight weeks with usually one or two different interventions. Tr. 545-546.

116. Dr. ██████ testified that going through all of the records was “like a puzzle and you try to put the pieces together, it was really difficult to do because there were so many inconsistencies in Providence’s records.” Tr. 373. I agree. This hearing officer cannot ascertain JG’s initial levels of performance from what she was doing when the Parent unilaterally placed her at Hamilton.

117. Dr. ██████ review of the record did not find any documentation that there was a referral for special education made prior to March of 2020. Tr. 465.

118. Dr. ██████ testified that the last day of in-person school was March 13, 2020. The following week was turned into school vacation week “so that the schools could prepare to

open virtually the following week, and then school remained virtual for the entirety of that school year.” Tr. 459.

119. Dr. ██████ testified that based on the written record the first time SG requested that JG be referred for a special education evaluation was in October of 2020. Tr. 467. And there was a referral meeting on October 26th. Tr. 467. At the meeting a referral was accepted and evaluations were authorized. *Id.* Based on JG’s December 10, 2020 “intervention progress report and data analysis” the team “appeared” to determine that JG was eligible for specialized instruction, but that Dr. ██████ “cannot definitely say because [she] wasn’t present.” Tr. 468-470.

120. Dr. ██████ testified that there was no evidence of any screening tools used to determine initial behavior, developmental or academic benchmarks; Tr. 751, 754, that the district did not conduct educational or psychological testing or complete classroom observation in developing JG’s IEP, Tr. 758; and, that there is a “lack of information about the assessment tools”, “minimal” data points in the record for an eligibility decision to be made. Tr. 766,758.

121. Dr. ██████ testified that there was a “huge gap” between February and March and then it didn’t start again until the following October or November...that is a big-time span to see if an intervention is working”, Tr. 758; however, that was around the time that COVID first hit.

122. Dr. ██████ testified that Providence found JG “eligible based on very limited data points referenced in their own reports.” Tr. 373-74. She would have expected to see an observation. Tr. 378. Because in this case you are looking for “avoidant behaviors which were evident when she gets up and goes to the bathroom several times.” *Id.* “I would expect you would look at her frustration level, what is her anxiety level, and that where that school psychologist or social worker—those ratings would be helpful. You want to know with certainty that the child is disabled

and if so, and based on the information know the program, the methodology, the environment in developing a prescriptive plan.” Tr. 378-79. There were inconsistencies and “just seemed to me that they qualified her almost because the mom had requested it.” Tr. 374. According to her, “developmental delay” was a “consolation prize.” *Id.*

123. Dr. ██████ testified that a referral team should consist of people with expertise in the areas to be evaluated, the general educator, and a parent. Tr. 366-367. However, she did not see evidence of a reading specialist in the record “being part of the team or decision-making process, given that that was her most significant area of concern.” Tr, 375.

124. In light of the Parent alerting the district to a concern about dyslexia, “a battery of assessments and common assessments, such as the Wechsler Individual Achievement Test (WIAT) and Comprehensive Test Of Phonological Processing (CTOPP), to evaluate students for language-based learning differences.” C. Ex. 136 at 11 should have been performed. According to Dr. ██████ report, the fact that this did not occur in this instance means there the district failed its obligation “to complete a comprehensive evaluation in a timely manner and properly identify JG as a child with a disability in turn contributed to the District’s failure to provide appropriate specialized instruction.” *Id.* at 12.

125. Dr. ██████ acknowledged that the WIAT is a test to determine reading deficiencies; that the comprehensive test of phonological process is used to determine language-based learning differences. Tr. 604-605.

126. Dr. ██████ testified that there are discrepancies between several initial meeting documents that “do not provide clear, measurable or accurate levels of performance.” C. Ex. 136 at 12.

127. Dr. ██████ testified that she thought JG's lack of progress was "pretty significant" and that it "really wants further investigation, evaluation and due diligence on behalf of the district to find out what's going on." Tr. 376. She further testified that she "would expect to see the district do a cognitive and educational, speech/language was done, but there was no evaluation looking at...specific reading issues. So there was no core, or there were no literacy specific evaluations." Tr. 377.

128. Dr. ██████ testified that the IEP did not document "what criteria they use to meet the standard" for their determination that JG qualified for services under the developmental delay eligibility category so it is uncertain as to what other eligibility categories JG may also qualify under. Tr. 471.

129. Dr. ██████ stated that "[i]t appears that the OT evaluation that was done at the time would meet the criteria. It also appears that the neuropsych that was done...would meet their criteria as well. However...given the fact that all of the services in education had been provided to [sic JG] virtually and the challenges of doing an evaluation, it is an appropriate category to use at the time of that eligibility determination." *Id.*

130. Both Dr. ██████ and Dr. ██████ thought additional tests should have been completed. Dr. ██████ was "concerned that... more reading testing hadn't been done." Tr. 494. Dr. ██████ thought additional testing in the area of the psychological, educational or neuropsychological testing should have been completed. Tr. 776.

131. In her review of Dr. ██████ neuropsych report Dr. ██████ stated that the district considered this evaluation when evaluating JG. Tr. 477. In fact, "the vast majority of [the report's] accommodations are included in the IEP." Tr. 478. She further felt that an hour a day of reading instruction is "a very high level of service to start out with. It may be something that she eventually

needed, but as an initial IEP for a student going into second grade and also ...with [sic JG] being a virtual learner, I would have concerns....” Tr. 489. Dr. [REDACTED] also opined that “it appears that JG did make progress” with RTI. *Id.*

132. However, Dr. [REDACTED] did not know if Dr. [REDACTED] testing was done virtually or in person. Tr. 522. And because she did not know, she is not sure if the information in Dr. [REDACTED] report is “totally accurate.” Tr. 523.

133. Dr. [REDACTED] said that it “looks like the [IEP] team considered” Dr. [REDACTED] recommendations but rejected them. Tr. 559. However, when pressed she could not provide a basis for the team’s rejection because she was not “at those meetings.” *Id.* She acknowledged that there were no professional reports that contradicted Dr. [REDACTED] findings. Tr. 566.

134. Dr. [REDACTED] testified that the IEP progress notes were not sufficient to demonstrate that JG made progress.

135. Dr. [REDACTED] also testified that there was “nothing in the school record” that documented JG’s anxiety. *Id.* This hearing officer disagrees. Information about her anxiety was in her school records from [REDACTED] that Providence should have had. C. Ex. 8 at 14. It was also commented on in at least one of the meeting notes. C. Ex. 66.

136. Dr. [REDACTED] testified that when a student is not making progress in literacy there are extensive RIDE guidelines that would require a personal literacy plan. Tr. 354. According to JG’s IEP, JG has a personal literacy plan but there was not one in the records. Tr. 355.

137. Dr. [REDACTED] opined that the IEP document was the same as the RTI intervention. “It was no different”. Tr. 379-380. It did not address JG’s anxiety. Tr. 388-389.

138. Given the fact that the “learning environment was radically different” during virtual learning, Dr. ██████ thought that JG’s initial IEP was appropriate but “we don’t know” because “Providence really never had the chance to implement it in person as intended.” Tr. 494-495.

139. Dr. ██████ also opined that JG is “absolutely” making progress at ██████. Tr. 395. She is responding to instruction and ██████ did not report heightened levels of anxiety, they did not report multiple breaks to the bathroom. Tr. 395-96.

140. Dr. ██████ asserted that “the IEP as proposed would constitute FAPE.” Tr. 613. She also said that in her opinion, JG could receive FAPE in the least restrictive environment if she returned to Providence. Tr. 503. The district has “many, many students with a similar profile to J.G. Her placement would put her in a gen ed setting, so she would have greater exposure to her peers, that would definitely assist her with concerns that would be addressed around her language development, around some of the behavioral concerns...” *Id.*

Issues Presented

1. Whether Providence Violated its Child Find Obligations;
2. Whether Providence adequately evaluated JG in all areas of suspected disabilities and developed and IEP with services that provide FAPE;
3. And if not was the parent’s unilateral placement appropriate;
4. Whether the Parent provided timely notice for her unilateral placement;
5. Whether the cost of the education placement is unreasonable or do the equities favor the placement;
6. The Parents Additional Claims for Relief.

Discussion³

An IEP is “the centerpiece” of the “delivery system for disabled children.” *Endrew F. ex rel. Joseph F. v. Douglas County Sch. Dist.* 137 S. Ct. 988, 944(2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988)). “To meet its substantive obligation... a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S.Ct. at 1000; also see *Board of Ed. Of Hendrick Hudson Central Sch. Dist. Westchester Cty. v. Rowley*, 458 U.S. 174, 102 S.Ct. 3034, 73 S.Ed. 2d. 690 (1982). For a child fully integrated in a regular classroom that progress should be “reasonably calculated to enable the child to achieve passing marks from grade to grade.” *Endrew F.*, 135 S. Ct. at 991 (quoting) *Rowley*, 458 U.S. at 203–204, 102 S.Ct. 3034. However, “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Endrew F.*, S.Ct. at 1001.

IDEA includes the authority to require public school districts to reimburse parents for their expenditures of unilateral placement to a private school where the parent’s placement is appropriate and the school’s placement is inappropriate. *Sch. Committee of Town of Burlington v. Depart. of Education of Massachusetts, et al* 471 U.S. 359, 369, 105 S.Ct. 1996,2002 (1985). However parents who do so “without the consent of state or local school officials, do so at their own risk.” *Id.* at 374, 2004. The determination of financial responsibility for determining that a proposed placement by the public school was inappropriate and whether or not a parent’s unilateral private placement is appropriate is determined pursuant to 20 U.S.C. § 1415, also see *Burlington*, 471 U.S. at 371, 105S.Ct. at 2003. A process that puts the burden of persuasion on the parents. *Schaffer v. Weast*, 546 U.S. 49 (2005). And in doing so, “equitable considerations are relevant in

³ In rendering this decision, I rely on the Statement of Facts above and incorporate them by reference to avoid restating them except when emphasizing a point or clarifying an analysis.

fashioning relief. *Id.* “[T]otal reimbursement [for the cost of the unilateral placement] will not be appropriate if a court fashioning discretionary equitable relief under IDEA determines that the cost of the private education was unreasonable.” *Florence County Dist. Four v. Carter*, 510 U.S. 7, 8, 114 S.Ct. 361, 362 126 L. Ed. 2d 284 (1993). Congress codified the substance of this holding in 1997 under 20 U.S.C. § 1412 (a)(10)(C). The first step is whether the parent provided “timely notice” to the district “at either the most recent IEP meeting or in writing at least 10 business days before the parent’s ‘removal’ of the child.” *Id.* at § 1412 (a)(10)(C)(iii)(I). An exception to this rule is if the parent was not informed of this requirement “via the procedural safeguards notice. *Id.* The second prong of the first step is whether prior to the child’s removal, the district requested an evaluation of the child, and if so, whether the parent refused. *Id.* at § 1412 (a)(10)(C)(iii)(II). The second determining whether the district’s proposed placement made FAPE available to the child “a timely manner prior to” enrollment. *Id.* at § 1412 (a)(10)(C)(ii). And, if not was the parent’s unilateral placement appropriate.” *Florence County Sch. Dist. Four, v. Carter By and Through Carter*, 510 U.S. 7, 15 (1993); *also see, Tuition and Related Reimbursement Under the IDEA*, Perry A. Zirkel, 282 Ed. Law Rep. 785 (2012), updated (2019,2021). The final step in this analysis is whether the cost of the education placement is unreasonable or do the equities favor the placement. *Id. also see A.W. v. New York City Department of Education*, 287 F.Supp.3d 420 at 525 (S.D.N.Y. 2018). “[A]ll relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable.” *Carter*, 510 U.S. at 16.

1. Whether Providence Violated its Child Find Obligations

IDEA’s “child find” obligations require “[s]chools receiving federal funding are required by law to have procedures and policies in place to ensure they identify (and then evaluate) ‘[a]ll

children with disabilities ... regardless of the severity of their disabilities ... who are in need of special education and related services,” *Doe v. Cape Elizabeth Sch. Department*, 382 F. Supp. 3d 83,98 (D. Me. 2019); *also see* 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111. “Agencies have an affirmative duty to identify and evaluate” children under the IDEA’s “child find” provisions. *Richard S. v. Wissahickon Sch. Dist.*, 334 Fed. Appx 508, 510 (3rd Cir. 2009). There is no requirement that a parent’s request for an evaluation be in writing. *Dist. of Columbia Pub. Schs.* 12 ECLPR 109 (Sea, DC 2015). “‘Reasonable’ steps must be taken to ‘promptly’ obtain the student’s prior IEP and related records” if that child has an IEP. *J.G. v. Mills*, 2006 WL 8066678 *36 (E.D.N.Y. 2006); *also see* 20 U.S.C. § 1414 (d)(2)(C)(i)(1); *N.G. v. Dist. of Columbia*, 556 F.Supp.2d 11,24 (D.C. 2008). A district should have “reason to suspect” a need for special education based on the student’s records and verbal interactions with school staff. *Weisenburg v. Board of Educ. Of Salt Lake City Sch. Dist.*, 181 F. Supp 2d 1307, 1311 (D. Utah 2002) (Summary judgement denied on a parent’s claim that the district failed its child find obligations where the district should have had a “reason to suspect” a need for special education based on the student’s records and verbal interactions with school staff.); *also see, Morrison v. Los Lunas Public Schools*, 2013 WL 12330019 *10 (D.N.M. 2013).

JG’s school records from [REDACTED] from February of 2018 indicate she was under the care of a neurodevelopmental pediatrician, had a full OT evaluation and was doing occupational therapy. She has sensory processing disorder, tantrum defiant disorder, trouble regulating emotions, her gross motor skills were “off”, and she was also waiting for a physical therapy referral. C. Ex. 8 at 14. Providence’s own outreach screening records indicate that JG initially failed General Development and Speech/Language screenings. C. Ex. 11. Providence’s own kindergarten school registration records completed by the Parent state that JG has “sensory

processing disorder” on April 8, 2019. C. Ex. 15. According to Dr. [REDACTED] when a student transfers from one school district to another, “the [school] registration department would get records, school based records.” Tr. 617. It is a “joint responsibility” between the two school districts involved in the transfer. *Id.* According to Ms. [REDACTED] she does not know if she even had access to JG’s records, including her registration information. Tr. 641. She said that she has a practice of reviewing them if the information is in the student’s folders, but that sometimes the folders are not complete. *Id.* “[S]ometimes they’re not in school buildings, sometimes they’re downtown.” *Id.* When asked at the hearing if she reviewed JG’s kindergarten registration records Ms. McEntee said that she did not have access to them. Tr. 710. She further did not know that [REDACTED] had wanted to evaluate JG. *Id.* It was not communicated to her. *Id.* The private OT reports would have also been of significance to her when she started her interventions with JG, but she did not have them. TR. 710-711. Nor did she have SG’s initial neurodevelopmental report. *Id.* She had “none of it.” Tr. 711. Ms. [REDACTED] testified that if she had had this information it “may have been” significant to her, but she did not. Tr. 710-711.

When JG attended kindergarten there is un rebutted testimony that she had to be escorted into the building, that some days she needed a weighted vest to get into the building, and that she had repeated toileting accidents. Tr. 39-40, 298. At a parent/teacher conference in November of 2019 Ms. [REDACTED] “showed” SG that JG is where she “needs to be”. Tr. 643-645. This resulted in Ms. [REDACTED] referring JG to RTI. Tr. 645-648, 670. According to Ms. [REDACTED] the “next available [RTI] appointment was January 17, 2020. Tr. 648. At the time, Ms. [REDACTED] was aware that JG was completing OT outside of school. Tr. 642. According to [REDACTED], the first time she interacted with JG was in January of 2020. Tr. 670. In her review of the record Dr. [REDACTED] acknowledged her teacher had concerns about her academically “all along”. Tr. 493. Given the

fact that Providence has an “obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy”, 56 IDELR 50. January 21, 2011, I find that these teachers should have had a “reason to suspect” that JG had a disability and I have no doubt that they would have. It was the same conclusion that JG’s pre-school teacher had reached a year prior. Tr. 31-32. I would also point out that Providence failed yet a third time to refer JG for special education when an OT and speech pathologist “screened her and determined that evaluations are recommended” on February 21, 2020, which was not acted upon. C. Ex. 24; *also see*, C. Ex.17.

SG testified that she provided multiple copies of a neuropsychological evaluation to several teachers in the Fall. There is also additional evidence in the record to substantiate SG’s assertion.⁴ However, both Ms. [REDACTED] and Ms. [REDACTED] deny receiving a copy in and around this time. Because I find all three (3) witnesses credible I conclude that the Parent has not presented enough evidence to overcome the Parent’s burden of persuasion required by *Weast* that she provided a copy of JG’s neuropsych to either Ms. [REDACTED] or Ms. [REDACTED] in the Fall of 2019.

At an IEP team meeting on June 16, 2021, in a recording, a representative of Providence said that the schools were “shut down in March and that is why [JG] was evaluated.” C. Ex. 82. This hearing officer is well aware of the challenging environment that the teachers, staff, and administration must have been facing at that time. In fact, in my judgment teachers were one of the many front-line workers that provided an invaluable contribution to our community during this time of crisis. However, there is plenty of evidence in the record that demonstrates JG should have

⁴ [REDACTED] Chung’s email (C. Ex. 40) appears to acknowledge that SG gave JG’s initial neuropsychological evaluation to the district in the Fall of 2019, and another email states that SG “was working with the staff at Vartan to have [JG] tested for dyslexia” in November of 2019. C. Ex. 19; *also see* C. Ex. 24 (refers to a “neuropsych” completed when JG was 3).

been referred before this time. Regardless, as Parent’s counsel indicates, “COVID cannot serve to excuse Providence’s failure to evaluate.” *See*, C. Memorandum of Law at 40, referencing *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities*, (U.S. Depart. of Education, March 21, 2020). Besides parents were going through immense challenges also, and of course, their kids have a right to be educated.

In its Reply Memorandum of Law, Providence asserts that “[t]he crux of Petitioners’ case regarding violations of the child find provision of IDEA rest on the issue of credibility.” P. Reply Memorandum of Law at 2. I disagree. It rests on SG’s unrebutted testimony about JG’s anxiety when going into school, concerns raised about JG’s academic performance in November of 2020 by Ms. [REDACTED], the fact that Providence knew JG was completing OT outside of the Providence school system, the fact that neither Ms. [REDACTED] or Ms. [REDACTED] had access to JG’s records that documented multiple learning challenges, and, the fact that if either or both of these teachers had these documents they would have “reason to suspect” that JG should have been referred, including the fact that Providence’s own documentation recommended evaluations February of 2020, a point that they acknowledge “may” have been significant. In her testimony, Dr. [REDACTED] stated “in this particular case there were multiple opportunities to recognize this was a child that there was a concern, pretty significant concerns.” Tr. 370. I agree. Accordingly, based on the student’s records staff knowledge of anxiety and outside OT, I find that Providence violated its “affirmative” child find obligations to identify and refer JG to special education in each of these separate instances.

2. Whether Providence Adequately Evaluated JG in all Areas of Suspected Disabilities and Developed and IEP with services that provide FAPE

a. Providence’s Initial Evaluation Responsibilities

Under IDEA “[a] child must be tested in all areas of suspected disability. *N.B. and C.B. vv. Hellgate Elementary Sch. Dist*, 50 IDELR 241 (9th Cir. 2008); 20 U.S.C. § 1414(B). LEAs must conduct “a full and individual initial evaluation” of a student “before the initial provision of special education and related services to a child with a disability.” 34 C.F.R. § 300.301. A “public agency must ensure that...[a] child is assessed in all areas related the suspected disability...” *Id.* at § 304 (c)(4).

At their initial referral meeting Providence recommended OT and speech and language evaluations, and a social history. While the subsequently met several times thereafter to listen to additional concerns of the parent, they really did not complete any additional testing and/or evaluations. I find Providence’s lack of action in this regard insufficient. The district did not assess, test, and evaluate JG in all areas that she should have had a suspected disability. I base this decision from Providence’s assessment at initial referral meeting, a review of JG’s school records from Chariho, her kindergarten registration information, her neurodevelopment report,⁵ her kindergarten report card results, and her numerous referral meetings and progress reports.⁶ Specifically, more testing and evaluation should have at least been completed in areas of reading and writing. More information and/or testing should have also been done to analyze her emotional well-being, a concern that SG substantiated in her unrebutted testimony and email exhibits. To support this determination, I rely on Dr. [REDACTED] evaluation and its results as well as the fact that the district never disputed his findings. Dr. [REDACTED] reviewed JG’s family history, assessed her

⁵ There is much dispute about when this report was actually given to the school department. At a minimum, it was given to Providence on December 14, 2020. C. Ex. 42. And while I agree with Providence in that it was old, it should have nevertheless been taken into consideration in determining whether JG needed further evaluation.

⁶According to the meeting notes of the initial meeting on October 26, 2020, JG’s “had difficulty completing sentences”, her “intelligibility was decreased”, she was “struggling with her writing putting sounds with words”, she was reading at a kindergarten level, and she has “difficulty with attention”. C. Ex. 29. Notwithstanding this Providence knew JG had a neurologist and was being privately tutored. *Id.* Also see, C. Ex. 29, 36, 41, 56, 58, 60, 66.

current functioning, completed a number of tests that the district should have authorized, had input from her teachers (which Providence also did), her mother, and that included the doctor's own behavioral observations. C. Ex. 62. From this thorough review and evaluation Dr. [REDACTED] was able to diagnose JG with Attention-Deficit Hyperactivity disorder, Combined Presentation, General Anxiety Disorder, Specific Learning Disorder, with impairment in reading, Specific Learning Disorder, with impairment in written expression, and Specific Learning Disorder with Impairment in mathematics.⁷ *Id.* at 1-3. No one from Providence disputed *any* of Dr. [REDACTED] findings and/or conclusions in meeting notes or in any PWN notwithstanding the fact at Providence had determined that JG was making "insufficient progress" in areas of concern Dr. [REDACTED] identified. Dr. [REDACTED] opined that "it appears that JG did make progress" with RTI, and although it is difficult to assess because initial baselines from which to make this determination are not established, there is evidence of that. However, the overwhelming weight of the evidence referred to demonstrates that it is not enough progress for JG to advance from grade to grade.

Dr. [REDACTED] said that it "looks like the [IEP] team considered" Dr. [REDACTED] recommendations but rejected them. Tr. 559. However, when pressed she could not provide a basis for the team's rejection because she was not "at those meetings." *Id.* In addition she acknowledged that there were no professional reports that contradicted Dr. [REDACTED] findings. Tr. 566. Although

⁷ The Parent's counsel goes to great lengths to argue that Providence put JG in the wrong disability of "developmental delay". The Parent further alleges that the "Developmental Delay" category the district found JG eligible under, "did not pertain to her." C. Memorandum of Law at 43-44 The Parent states the district ignored "the strict definition of" the "Developmental Delay category. Parent's Memorandum of Law at 45. To support this argument that Parent avers that "Providence never conducted a single evaluation that would show the requisite standard deviation." *Id.* I agree. There is nothing in the record that demonstrates Providence conducted testing that qualifies JG under the category of developmental delay as laid out in Rhode Island regulations that the Complainant refers to. In fact, Dr. [REDACTED] testified that the IEP did not document "what criteria they use to meet the standard" for their determination that JG qualified for services under the developmental delay eligibility category. Regardless, because Providence did not complete adequate evaluations this hearing officer cannot whether putting JG in this category was accurate or not.

Dr. ██████ is a qualified expert, I do not find her assessment credible because she does provide a basis for her conclusion that it “looks” like Providence “considered” Dr. ██████ recommendation, particularly when no one from the district disagreed with his diagnosis. Providence also asserts that consideration of a Parent’s “IEE does not equate to acceptance or substantive discussion.” P. Memorandum of Law at 29. While true, clearly Providence had become or should have become aware of JG’s suspected reading and writing disabilities at this juncture if not before, and once they were “on notice”, the district had an obligation to conduct its own testing and it did not. *See, Hellgate Elementary Sch. Dist.*, 50 IDELR at 246.

I further base my decision on the testimony of both Dr. ██████ and Dr. ██████. Both thought additional tests should have been completed. Dr. ██████ was “concerned that... more reading testing hadn’t been done.” Tr. 494. 133. Dr. ██████ testified that she thought JG’s lack of progress was “pretty significant” and that it “really wants further investigation, evaluation and due diligence on behalf of the district to find out what’s going on.” Tr. 376. Dr. ██████ further testified that there were very limited “data points”, there was no observation to assess JG’s anxiety, and there was no evidence of a reading specialist as part of the record. She “would expect to see the district do a cognitive and educational, speech/language was done, but there was no evaluation looking at...specific reading issues. So, there was no core, or there were no literacy specific evaluations.”⁸ Tr. 377. The district should have conducted “a battery of assessments and common assessments” that it did not do. Accordingly, it violated its obligation to “a full and individual initial evaluation” of JG for suspected disabilities in this instance.

⁸ According to Dr. ██████, in light of the Parent alerting the district to a concern about dyslexia, “a battery of assessments and common assessments, such as the Wechsler Individual Achievement Test (WIAT) and Comprehensive Test Of Phonological Processing (CTOPP), to evaluate students for language-based learning differences” should have been completed by the district. C. Ex. 136 at 11. That did not occur in this instance.

b. Adequacy of JG's IEP

Notwithstanding the lack of reading, writing and/or neuropsychological evaluations Providence ultimately developed an IEP for JG. However, it was not only incomplete for lack of evaluations, as the Parent's expert points out, it also did "not provide clear, measurable or accurate levels of performance." C. Ex. 136 at 12-13. The services provided reading instruction three (3) times per week for one-half hour and OT. The reading instruction was the same amount of instruction she received with her RTI instruction.⁹ The same level of services in which that resulted in her reading below grade level. "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Andrew F.* 137 S. Ct. at 1000. Despite not disputing any of Dr. [REDACTED] recommendations Providence did not address JG's reading or writing deficiencies.¹⁰ The IEP did not address JG's documented emotional challenges documented in SG's testimony and in Dr. [REDACTED] evaluation. The only additional comment the team made was that "mom should have [JG] see a child psychologist." C. Ex. 66. In testimony, SG stated that she was getting "what's available to her". Tr. 98. Testimony that the district did not dispute.

Providence alleges that it provided a "legally sufficient" IEP that provides FAPE. However, the reading services provided were essentially what JG was receiving in RTI, it had little to no writing, the same with social/emotional supports, and they did not change in substance from her initial IEP. At the hearing, several witnesses for Providence said JG's attendance was a

⁹ The Parent suggests that the district was "watering down" the instruction by changing the service to a small group setting. C. Memorandum of Law at 49. However, this hearing officer disagrees. He finds Ms. [REDACTED] justification that JG was enjoying a small group setting as very credible. That is not the issue; however, the issue is the services that Providence was providing was not working and they needed to adjust, and they did not do that.

¹⁰ The only additional modification Providence made to JG's initial IEP after the Parnell evaluation was his recommended accommodations outside of the JG's regular classroom that allowed for verbal responses for spelling tests, adult prompts, preferential seating, redirection when needed, extra time, and flexibility with homework schedule. C. Ex. 72 at 12. These additional accommodations were to begin in September, I assume that is because JG was in the virtual academy at the time that this IEP was developed. Meaning there was actually no change to JG's IEP for the rest of the 2020-2021 school year and there was certainly no change the services offered.

concern. The record was inconclusive to determine whether or not this was true. Regardless, if attendance was a concern, one would think that the school department would assess why. Was it due to outside factors, or was it due to JG's disability? These questions should have been asked and they were not.

Providence also argues that it was not afforded the opportunity to implement JG's IEP in person. In the audio recordings and at the hearing Providence asserted that Dr. ██████ proposed one-on-one one-hour per day reading services were inappropriate because JG was a virtual learner. Tr. 733-736. Commentary went on to infer that was also in part because SG "choose the VLA". C. Ex. 82. Dr. ██████ thought that JG's initial IEP was appropriate but "we don't know" because "Providence really never had the chance to implement it in person as intended." Tr. 494-495. As previously indicated herein, this hearing officer has great respect for teachers and administrators and the challenges that they faced during this once in a lifetime pandemic. However, guidance from the U.S. Department of Education is clear: "**ensuring compliance with the Individual with Disabilities Education Act (IDEA)...should not prevent any school from offering educational programs through distance instruction.**" *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities*, (U.S. Depart. of Education, March 21, 2020). Therefore, this argument is legally irrelevant. Moreover, there was discussion at the March 29, 2021 IEP team meeting about bringing JG in for services which SG appeared to be ready to do. In fact, according to SG she talked to the principal about this, but he said, "it is not a good idea, [JG] is a virtual student, we're in COVID." Tr. 735. That was unfortunate because notwithstanding the principal's decision, apparently JG was already coming in to school for OT, Tr. 81-83, C. Ex. 66.

Providence also argues that the Parent did not provide timely consent. To the extent Providence wants to assess timeliness it should look in the mirror. It did not timely identify, assess, evaluate JG, and/or develop JG's IEP. Moreover, it is simply not relevant to the substance of the IEP.

This hearing officer finds that JG's proposed IEP was not based on her disability and/or evaluations, rather, it was based off the fact that she was a virtual learner as opposed to an in-person student. It was not "reasonably calculated to enable the child to achieve passing marks from grade to grade." *Endrew F.*, 137 S. Ct. at 1000; (quoting) *Rowley*, 458 U.S. at [203–204](#), [102 S.Ct. 3034](#). All one has to do is to look at JG's report cards for kindergarten *and* first grade. It is further demonstrated by the fact that the [REDACTED] School, a school that specializes in children with learning challenges, required JG to repeat first grade before accepting her. Accordingly, based on the record I find that JG's IEP did not provide the services in a timely manner that will allow her to advance from grade-to-grade and therefore it does not provide FAPE.

3. Whether the Parent's Unilateral Placement was Appropriate

A parent's unilateral private placement needs to provide "some element of special education services in which the public school placement was deficient." *L.H. v. Hamilton County Dept. of Education*, 900 F.3d 779,791 ((6th Cir. 2018)(quoting) *Berger v. Medina City Sch. Dist.*, 348 F.3d 513,523 (6th Cir. 2003). The appropriateness or "reasonableness" of the placement "depends on the nexus between the special education required and the special education provided." *Mr. I. ex rel. L.I. v. Maine Sch. Administrative Dist. No. 55*, 480 F.3d 1,25 (1st Cir. 2007).

Dr. [REDACTED] report diagnosed JG with Attention-Deficit Hyperactivity disorder, Combined Presentation, General Anxiety Disorder, Specific Learning Disorder, with impairment in reading, Specific Learning Disorder, with impairment in written expression, and Specific Learning

Disorder with Impairment in mathematics. C. Ex 62 at 1-3. Diagnoses that Providence did not disagree with. The “school within a school” model at Hamilton, along with the Orton-Gillingham approach, which includes small group instruction, and moves on only after a student has “mastered” a skill provides for the “nexus between the special education required and the special education provided”. It minimizes potential anxiety challenges and provides reading and writing instruction at a pace that the student (in this case JG) dictates.

According to SG, JG has “made tremendous progress” at [REDACTED]. Tr. 303. She is “actively using her strategies”, for the “first time ever” she is asking for books, she is not anxious, and she does not have “crying fits going to school”. Tr. 303-304. From the record I find that JG has made significant strides emotionally. Providence makes a fair point in questioning her “slow and steady” academic success. According to the record JG’s progress has not been consistent. Nevertheless, JG needs intensive reading and writing services, services that Providence was not willing to offer—“intensive” services that Providence acknowledges she is now getting.

In sum, because of JG’s emotional gains and as well as the “intensive” services she is receiving in reading and writing I find that the Parent’s unilateral placement at the [REDACTED] School is appropriate.

4. Whether the Parent Provided Timely Notice

Under IDEA the potential cost of tuition reimbursement may be reduced or denied if a parent does not inform the IEP team “that they were rejecting the placement proposed” or “10 business days...prior to the removal of the child...the parents did not give written notice to the public agency of the information required by” act. 20 U.S.C. § 1412 (a)(10)(C)(iii)(I) or if a parent does not make a child available for district evaluations. *Id.* at § 1412 (a)(10)(C)(iii)(II).

In this matter counsel for the Parent sent a letter to the district on May 5, 2020 informing them that the drafted IEP “fell far short” and that SG is “considering unilateral placement.” C. Ex. 69. Shortly thereafter Providence’s legal counsel emailed alleging that SG did not sign and/or provide consent to allow for implementation of the IEP. C. Ex. 75. On May 21, 2021 SG’s attorney provided consent. The parties then met twenty (20) days after on June 10, 2021 at which time SG informed them again that she was considering an out of district placement at the ██████████ School. C. Ex. 70. The had another IEP meeting on June 16, 2021. While the record is unclear as to the specific date JG transferred to ██████████ it certainly was more than ten (10) days after the district was notified by SG’s counsel. Separately, SG was never provided with her procedural safeguards, consequently she did not know her legal rights were until she hired legal counsel. There is also no evidence to suggest that SG did not make her child available for district-initiated evaluations. In fact, one of the issues in this matter is the fact that the district did not fully evaluate the Complainant’s child. Accordingly, I find that SG is compliant with 20 U.S.C. § 1412 (a)(10)(C)(iii) and there is no reason to deny or reduce tuition reimbursement based on the requirements this statute.

5. Whether the Cost of Placement is Unreasonable or Do the Equities Favor Placement

Although there is no evidence in the record about whether the cost of tuition at ██████████ is unreasonable or otherwise expensive relative to other alternatives, I find a tuition of \$54,151.44 is a lot of money. Having said that, Providence should have identified and referred this child for evaluation as early as November of 2019 and then developed an IEP but it did not. It did not find this child eligible until October 26, 2020, it did not develop its initial IEP until January 21, 2021 which was eventually finalized in May of 2021 despite the fact that the IEP it is offering is inadequate and does not address all of JG’s deficiencies. Given these factors as well as the fact,

the Parent was not aware of her procedural due process rights until she hired counsel, I find that the equities favor reimbursing the Parent for unilaterally placing her child at the [REDACTED] School. I further find that Providence should place her at [REDACTED] and pay her tuition for the 2022-2023 school year.

6. Additional Requests for Relief

a. Reimbursement for other Services Privately Obtained

i. *Reimbursement for Other Services:* It appears that SG is seeking reimbursement for private OT, and Arc/private tutoring. SG initiated OT on her own prior to coming to Providence and now JG is placed at the [REDACTED] School. Providence should not also be responsible for compensatory OT services. Accordingly, I deny the Parent's request for reimbursement of this cost. There is scant evidence in the record regarding the basis for SG's claim for reimbursement of Arc/private tutoring expenses. Accordingly, the Parent's request for this relief also is denied.

b. An Order that School Officials Produce Records- This matter was resolved in preliminary hearings and is therefore moot.

c. An Order that School Officials Cease and Desist Retaliating

I agree with Providence—the Parent “has not provided a scintilla of evidence...that indicates that she or [JG] have been retaliated against.” P. Memorandum of Law at 36. In fact, I find that the teachers had a herculean task and worked in good faith trying to keep students and staff safe while at the same time educate them to the level of services that they are legally entitled to under the law.

d. Compensatory Services

In light of the fact that JG is making “tremendous progress”, Tr. 303, as well as the fact that the Complainant is not clear about what specific compensatory services she is requesting, and the fact that JG is receiving “intensive direct instruction” at the Hamilton School (Tr. 261) at what will be a significant cost to Providence, I find that compensatory services are not warranted.

e. Attorney’s Fees

To the extent this hearing officer has jurisdiction over this determination I find that the Complainant is a prevailing party on the issues of denial of FAPE to JG, the Parent’s unilateral placement, reimbursement of tuition, and placement at [REDACTED]. *See*, 20 U.S.C. § 1415 (i)(3).

Based upon the foregoing decision, this Hearing Officer enters the following Order:

1. Providence shall reimburse SG for the cost of tuition of the Hamilton School for the time she has placed her daughter there after June of 2020.
2. Providence shall place and pay for future tuition expenses to place JG in the [REDACTED] School.

Entered this 5th of May, 2022



Gregory A. Mancini