



Illinois State Board of Education

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James T. Meeks
Chairman

Tony Smith, Ph.D.
State Superintendent of Education

MEMORANDUM

To: Tony Smith, Ph.D., State Superintendent of Education
Stephanie Jones, General Counsel

From: Nancy Krent, Facilitator of the Public Inquiry Team
Richard Cozzola, Advocate Representative of the Public Inquiry Team
Rupa Ramadurai, ISBE Representative of the Public Inquiry Team

Re: Final Report of Public Inquiry

Date: April 18, 2018

I. INTRODUCTION

On November 16, 2017, a group of public education Advocates¹ presented an Open Letter to the Illinois State Board of Education (ISBE), asking that the Board open an investigation into a number of issues relating to the provision of special education services by the Board of Education of the City of Chicago, commonly known as the Chicago Public Schools District #299 (CPS).

Based on its authority under the Individuals with Disabilities Education Act (IDEA)² and Articles 2 and 14³ of the Illinois School Code, ISBE determined that it would investigate the matters identified in the Open Letter. ISBE desired to facilitate a fair and transparent inquiry into how CPS is providing special education to students so the agency conducted the state's first ever Public Inquiry to address the central question of whether there is a policy environment in CPS preventing students with special needs from being served.

The General Counsel of ISBE appointed a Public Inquiry Team consisting of Nancy Krent, Facilitator; Richard Cozzola, Representative of the Advocates; and Rupa Ramadurai, ISBE Representative. The Inquiry Team was charged with conducting the Inquiry, undertaking fact-finding regarding the issues, and reporting to the Superintendent and General Counsel to outline what the Team learned. This Memorandum contains the Inquiry Team's findings in this Matter.

¹ Signatories to the Open Letter include Access Living, Shriver Center on Poverty Law, Chicago Principals and Administrators Association, Chicago Teachers Union, Parents 4 Teachers, Ounce of Prevention Fund, Legal Council for Health Justice, Raise Your Hand for IL Public Education, LAF, Equip for Equality, Potter and Bolanos, LLC, Matt Cohen and Associates, and 19th Ward Parents for Special Education.

² 20 U.S.C.A. 1411; 34 C.F.R.300.151-300.153

³ 105 ILCS 5/2-3.8; 105 ILCS 5/14-5.01; and 105 ILCS 5/14-8.02e.

The Inquiry Team has worked since January to investigate these issues and has done so in a manner allowing for greater transparency and community participation than the traditional ISBE state complaint process would provide. The Team sought input at numerous points from both Parties -- the Advocates and CPS -- in the form of written information requests and oral meetings and interviews. The Inquiry Team invited both Parties to participate in the Public Hearing portion of the Inquiry as well. The Team commends both Parties for their cooperation and diligence in this effort.

The Advocates undertook this matter without compensation, as part of their desire to improve special education services for their constituencies and the community as a whole. They expended significant time and effort gathering information and affidavits. CPS was cooperative. It made several of its district officials available to meet with the Inquiry Team to explain the written materials being provided and to demonstrate its electronic IEP system, Student Services Management (SSM). CPS was timely in most of its responses, even though the Inquiry was conducted under a tightly controlled timeline. CPS also allowed the Advocates to conduct an SSM demonstration with a staff member of their choosing to show how an electronic Individualized Education Plan (IEP) works. In addition, the Inquiry Team, with the help of staff attorneys in the Office of the General Counsel, held several public comment sessions to allow members of the public to share their experiences with the Inquiry Team.

II. THE INQUIRY TEAM PROCESS

Based on the matters identified in the Open Letter, the General Counsel and the Inquiry Team identified four issues that the Team would investigate. These issues are:

1. Whether CPS's electronic IEP system, either alone or in conjunction with CPS's Policies and Procedures, results in an unlawful denial or delay of required services or limitations on the required continuum of services to students?
2. Whether CPS's documentation and data collection requirements results in an unlawful denial or delay in the identification of eligibility or provision of special education and related services to students?
3. Whether CPS's budgeting system results in the unlawful denial or delay in the provision of special education and related services to students?
4. Have CPS's policies regarding transportation resulted in an unlawful denial or delay in the provision of needed transportation services to students?

ISBE published these issues on its website so that the Parties and the public would be aware of the scope of the Inquiry. A copy of the full Statement of Issues is attached.⁴

The Inquiry Team, in consultation with the ISBE General Counsel, began by developing a written set of Operating Procedures so that the Parties and the public would understand how the process would be conducted. A copy of the Standard Operating Procedures is attached.⁵ The Inquiry Team utilized the procedures in the course of the Inquiry, but it also made adjustments when deemed necessary or in response to the Parties' requests. For example, the Inquiry Team

⁴ See Appendix A.

⁵ See Appendix B.

adjusted deadlines and the process for document submissions to increase the meaningful participation of all Parties and the public. The Inquiry Team notes that there were instances in which it did not grant the Parties' requests, often because of the need to remain focused on the primary issues with which the Inquiry Team was charged and to complete the process in a timely fashion. Where necessary, the Inquiry Team referred the Parties to the General Counsel, who holds the ultimate authority in the conduct of this Inquiry.

In brief, the process was as follows. The Inquiry Team submitted requests for information to both Parties, resulting in the production of thousands of pages of documents for the Team's review. The Team gave the public opportunities to comment on three different days, allowing individuals to meet with the Team to share information pertaining to the issues addressed in the Inquiry. Additionally, ISBE staff attorneys met with the public on three other days to collect information and help complete affidavits. The Inquiry Team met with CPS district staff to learn more about the SSM system, the budget, and the appeals process. The Team also met individually with the Advocates. The Inquiry Team met jointly with the Parties three times, once at the beginning of the fact-finding period to discuss processes and procedures, again midway through to address concerns, and again just prior to the Public Hearing, to iron out the mechanics of how the Public Hearing would be conducted.

III. INFORMATION GATHERING PROCESS

A. Fact-Finding from the Parties

The Inquiry Team engaged in a comprehensive fact-finding process. Both Parties were asked to produce written documentation and supporting affidavits. Parties and the public submitted more than 8,600 pages of material. The documents produced by each Party were shared with the other Party and posted on the ISBE Office of the General Counsel's website so that they were available to the public as well as to the Parties. As previously noted, the Inquiry Team also met with CPS staff on three occasions to learn how the budgeting and appeals systems function and to see demonstrations and understand how the electronic IEP system operates. Team members also reviewed a recording of the Elementary & Secondary Education: School Curriculum & Policies Committee session regarding Chicago Public Schools, which was chaired by Representative Fred Crespo in January, 19, 2018, and a recording of the City of Chicago Committee on Education and Child Development meeting held earlier that month.

In the course of the Inquiry, CPS produced organizational charts, guidance documents, Procedural Manuals, PowerPoint presentations of trainings, narrative responses by district and school staff, screenshots and documents generated by the SSM system, information related to the task force convened in late 2015 by former CPS CEO Forrest Claypool, budget presentations, and decisions from the school budgeting appeals process. The Advocates also provided the Inquiry Team with documentation, including, but not limited to, PowerPoint presentations of trainings, communications issued by CPS, budget reviews, Principal survey data, and CPS Procedural Manuals. The Advocates also submitted numerous affidavits that shared the personal experiences of parents, school psychologists, case managers, special education teachers, counselors, and special education advocates working within and on behalf of students with disabilities in CPS.⁶

⁶ For a more complete summary of the evidence, see Appendix C.

B. Community Engagement

ISBE provided numerous opportunities for public participation to ensure transparency and widespread engagement. These efforts included outreach via social media⁷ and stakeholder groups,⁸ making information accessible to the public on various pages of the ISBE website,⁹ and outreach by the Inquiry Team to individuals who had expressed an interest in participating to the General Counsel's Office. ISBE attorneys also went to three different areas of the city¹⁰ to gather information relevant to the Inquiry and to provide technical assistance to parents and others. Finally, as noted earlier, the Inquiry Team itself met with the members of the public, CPS personnel, and the Advocates.¹¹

At each in-person opportunity, the public had access to information and resources for other venues through which resolution of individual matters could be addressed (state complaint and Due Process forms) and a list of free and low-cost legal service providers.

To facilitate written submissions by members of the public, ISBE made the following forms available on its website: the cover letter for submission, the student record release, and the witness affidavit form. The Inquiry Team received 10 written submissions from the public, in addition to the numerous public comment statements. The written submissions were posted on ISBE's Office of the General Counsel's website and shared with the Parties.

C. Public Hearing

The Public Hearing was held on Tuesday, March 20; Wednesday, March 21; and Tuesday March 27, at Chicago-Kent College of Law. The Inquiry Team heard testimony from the following witnesses:

- Dr. Elizabeth Keenan, CPS Chief of Diverse Learner Supports and Services
- Ms. Kristy Brooks, CPS School Counselor and former Case Manager

⁷ Flyers and social media graphics were created for all community input days and were translated on Twitter and Facebook for the following input days: February 16, 21, 26, 27, 28.

⁸ Stakeholders contacted include Raise Your Hand for IL Public Education, Equip for Equality, Parents 4 Teachers, Ounce of Prevention Fund, Access Living, Shriver Center on Poverty Law, Legal Council for Health Justice, Legal Assistance Foundation of Metropolitan Chicago, Potter and Bolanos, Matt Cohen and Associates, 19th Ward Parents for Special Education, Chicago Teachers Union (CTU), Chicago Principals & Administrators Association, Chicago Public Library, Chicago United for Equity, Generation All, Southwest Organizing Project, Logan Square Neighborhood Association, Brighton Park Neighborhood Council, Community Organizing and Family Issues (COFI), ENLACE Chicago, Family Focus, Kenwood Oakland Community Organization (KOCO), The Resurrection Project, Pilsen Alliance, ONE Northside, Family Resource Center on Disabilities, Teachers for Social Justice, Educators for Excellence, Teach Plus, Stand for Children, Woodlawn Children's Promise Community, and the Family Defense Center.

⁹ ISBE also shared information relative to the community input days on ISBE's homepage and the General Counsel's webpage.

¹⁰ Public comment locations included Chinatown - at the Pui Tak Center, the Southside - at the Salem Baptist Church, and in Pilsen - at the National Museum of Mexican Art, on February 26, 27, and 28, respectively.

¹¹ Public comment sessions with the Inquiry Team took place at the James R. Thompson Center, the Center for Conflict Resolution, and Loyola University Chicago School of Law.

- Mr. Gregory Volan, CPS Senior Budget Manager
- Ms. Christine Palmieri, CPS Parent
- Mr. Juan Vaglienty, CPS Parent
- Ms. Sally Tabatsalis, CPS Special Education Teacher
- Ms. Bessie Tsitsopolous, CPS School Social Worker
- Ms. Kathleen Gibbons, CPS Senior Assistant General Counsel
- Ms. Archia Lucas, CPS Resource Program Manager
- Ms. Margaret Wakelin, Supervising Attorney, Equip for Equality

Both the Inquiry Team members and the Parties were given the opportunity to ask questions of the witnesses. The Public Hearing portion of the Inquiry focused primarily on areas where the Inquiry Team believed that further information or clarification would be helpful. The Public Hearing was live-streamed on the ISBE website and close-captioned for the benefit of members of the public who could not attend in person.

IV. FINDINGS OF FACT

Overview

In 2016, CPS undertook a number of changes to its special education procedures, its electronic IEP system (referred to throughout this report as SSM), and budgeting process for special education. This Public Inquiry is a result of complaints about the impact of those changes on special education services throughout the district. In response to questions posed by the Inquiry Team, CPS provided the Team with an outline and written description of some of the work completed by a CPS task force headed by Denise Little.¹² That task force worked with a group of consultants selected by then-CEO Claypool. In one of her affidavits, Dr. Keenan, who was not involved in the selection of the consultants, states that the group was “convened to try and determine if there were more effective and efficient methods of providing special education and related services in CPS. Reviewing any cost-saving opportunities was also a piece of the charge of the work of this task force.”¹³

The focus of the task force included creating standardized protocols and procedures, requiring data to ensure consistency across the district in the identified areas, and making changes to the SSM system and special education manual to implement these changes. The task force looked into seven specific areas: Specific Learning Disabilities (SLD), Transportation, Extended School Year Services (ESY), Paraprofessional Support, Assistive Technology (AT) , Related Service Providers, and Separate Day School Placements.¹⁴ The practices in many of these same areas, presumably developed because of this task force, were the focus of the Open Letter

¹² Former Senior Adviser to CEO Forrest Claypool. While the list of task force meetings began in December 2015, the meeting outlines and “workstream” documentation received by the committee do not begin until March of 2016. The Inquiry Team does not know whether the consultants or a member of CPS staff created the documentation we received, but the documents received shed a clearer light on the task force’s work than was previously available publicly. Dr. Keenan’s affidavit states that, while she was not a member of the task force, she asked staff whether the consultants had created any reports and was told no, CPS 1959-60.

¹³ CPS 1959.

¹⁴ Id.

submitted to ISBE by the Advocates that served as the impetus for this Public Inquiry.¹⁵ The minutes of the task force meetings end in August 2016, approximately the same time that trainings began on changes on CPS procedures and in the SSM system in these areas, both of which are referenced in the task force documents.¹⁶

ISSUE 1: Does CPS’s electronic IEP system, either alone or in conjunction with CPS’s Policies and Procedures, result in an unlawful denial or delay of required services or limitations on the required continuum of services to students?

The concerns discussed in Issue 1 and the matters covered in Issue 2 overlap in a number of ways. Some of the matters that are identified as roadblocks with the SSM system itself are also tied to the requirements for staff to collect and enter specific types of data or levels of documentation before decisions can be made with regard to eligibility (in the case of SLD identification), services and supports (ESY, AT, paraprofessionals, alternate assessments), and placement (therapeutic day school). In each of these cases, the Advocates have raised concerns that the particular data collection and entry requirements have delayed or denied the provision of needed services and supports for diverse learners.¹⁷ They raised similar concerns regarding the need, in some cases, for a Principal or District Representative (DR¹⁸) to review the documentation before the SSM system will allow the IEP team to act. The matters relating specifically to the SSM system are discussed in this section; the matters relating primarily to documentation and data, and to administrative approvals or concurrences, are discussed in the next section, Issue 2.

The Inquiry Team devoted a good deal of time to reviewing CPS’s electronic IEP system, known as SSM. CPS ran a demonstration of the SSM system for the Inquiry Team on February 7, 2018, which lasted several hours, and an additional session on February 28, 2018. Finally, on March 6, 2018, CPS made the SSM system available for a demonstration by two CPS staff members chosen by the Advocates. Kristy Brooks, a school counselor, and Megan Kowalski, a school social worker, conducted the demonstration to illustrate areas where they believed the SSM system created blocks or otherwise prevented IEP teams from recording their decisions or entering data.

The SSM system is an electronic IEP program that guides users through a series of fillable forms, designed to develop a complete IEP for a student, covering all of the statutorily required areas and prompting teams to answer questions that will lead them to identifying the proper goals, related services, supports, and placement for the student. Use of an electronic IEP system, such as SSM, has several advantages. It allows for the creation of an electronic database, using the

¹⁵ At least as early as March 2016, the task force acknowledged that parents, the Chicago Teachers Union, and Advocates would be concerned about the proposed changes to the IEP process and the loss of services to CPS students that could result from those changes. Its recommended response to these issues was “clear communication and intentional engagement.” CPS 2087.

¹⁶ CPS 2060-2073.

¹⁷ This is the term used by CPS to denote students with disabilities.

¹⁸ CPS uses the term DR to refer to Office of Diverse Learner Supports and Services (ODLSS) staff members whose job function is to serve as the ODLSS central office representative working with school IEP teams. In SY 17-18, there are approximately 40 DRs throughout CPS, responsible for overseeing the IEP teams at 646 schools (including district-run, charter, contract, and safe schools), both in connection with the matters discussed in this report, and in other areas, such as case manager training. See CPS 22-23 for a job description of the District Representative.

inputted information. It guides IEP teams through the process and can alert teams when areas have been omitted or inconsistent information has been entered. It produces more legible and consistent documentation than hand-written forms. The Inquiry Team was impressed with the thoroughness of CPS's SSM system and finds that it works well to meet those goals. In addition, the Inquiry Team notes that CPS's goal of "data-driven decisions," which it emphasized again at the Public Hearing, is laudable. The Inquiry Team agrees that IEP teams should make data-driven decisions. The Advocates also indicated agreement on this basic principle. The dispute between the Parties focuses not on whether data should be used, but rather on what data CPS is requiring, how it is gathered, and who is responsible for making the decisions based on that data.

The concerns, as they relate to the SSM system specifically, deal with the programming of the electronic IEP system to prevent IEP teams from freely entering certain information or making certain decisions. As discussed in more detail below, certain key areas are currently either locked for particular periods of the year or require an administrator (generally, the Principal) or a DR to authorize the system to open in particular areas. If the administrator does not agree to open that area (which can be done by pre-authorization in the SSM system or by the Principal or DR attending the meeting and agreeing to the service or confirming that sufficient data has been entered), the IEP team cannot finalize an IEP that contains that service, placement, or eligibility category. These areas include ESY, paraprofessional services, Dynamic Learning Maps (DLM), and separate day school placement.¹⁹

Additionally, the SSM system will not allow an IEP team to find a student eligible for services in the SLD category without the entry of certain data. In the case of SLD, CPS has indicated that the system verifies the entry of that data independently, and no administrator or DR action is needed. When the Inquiry Team reviewed the SSM system, it did not find that the SSM system required DR authorization for SLD eligibility²⁰. Furthermore, the DR Review Form does not include SLD as one of the areas requiring DR authorization for the electronic section to open. Issues also exist regarding both the SSM system and the issue of DR authorization or verification with regard to transportation of students in special education, but those are addressed in Issue 4, which specifically deals with transportation services.

¹⁹ The Advocates also raised concern about whether the SSM prevents an IEP team from adding Assistive Technology in certain circumstances. As we understand that issue, the Procedural Manual directs IEP teams to ask whether the student is progressing with the use of technology already available in the school. If the student is progressing, then the team is not prompted to move forward to consider whether there is other technology that would be better suited to meet the student's needs. The Inquiry Team received no evidence that this was intended to keep teams from moving forward and may simply be the result of phrasing the question imprecisely as "making progress" rather than "making adequate progress." The language regarding AT, however, can be confusing and might dissuade a team from exploring options outside of the current school when a student is making some, but not adequate, progress with the current "in-school" device. This is an area where clarifying the language may alleviate confusion.

²⁰ In her affidavit, Advocate Margaret Wakelin includes a portion of the transcript a Due Process Hearing containing the testimony of two DRs. One DR testified that she would attend an IEP meeting if there was not enough information made available beforehand concerning SLD eligibility. Advocates 235. The other DR testified that she attended IEP meetings about SLD eligibility because the district was concerned that Latino and African-American students were being identified for SLD at a higher rate, and CPS therefore wanted DRs involved in meetings where SLD eligibility was discussed. Advocates 282-83. There was no testimony suggesting that the SSM system necessitated the presence of the DRs.

As noted above, CPS made these changes to the SSM system initially in the summer and fall of 2016. The task force had several subcommittees or workstreams involved with modifications of the SSM system. CPS has made additional revisions in some of these areas since that time. Dr. Keenan testified, both in an affidavit and at the Public Hearing, that CPS is contemplating additional changes in some of these areas, in part in response to issues the Advocates have raised.

The Advocates have raised several complaints about the SSM system. They believe that the system prevents IEP teams from providing needed services, even if the team agrees the services are required, because the SSM system will not allow the decisions to be inputted or finalized if the Principal or DR is not present or has not given prior approval for the issue to be considered. They also argue that Principals and DRs use this authority to block services that the rest of the team agrees should be provided or to delay the provision of those services unnecessarily, causing hardship to both the students and the parents.²¹ In addition, the Advocates argue that the system prevents IEPs from reflecting the actual decisions made by teams because the SSM system auto-populates language into the IEP that contains statements at odds with the teams' decisions, and sections that the team wants to consider cannot be opened. Finally, the Advocates have argued that these changes were made, not to benefit special education students or to make more data-driven decisions, but rather as a way to save costs at a time when CPS was facing serious budget shortfalls.

CPS has explained that it has created these administrative systems to ensure that IEP teams are making data-driven decisions, and that the administrative oversight is simply to ensure that the IEP team has completed its data collection prior to making decisions. CPS has indicated that it wants to improve consistency in decision-making, so that student needs are handled in the same way across the district. In addition, CPS expressed concern that students were being over-identified for special education or were receiving services and supports that were more restrictive than needed, thus separating them unnecessarily from their general education peers, in violation of the IDEA's mandate for education in the Least Restrictive Environment (LRE). These goals are valid and laudable.

1. Extended School Year (ESY)

The area of ESY services is one that involves both Issue 1 and Issue 2 because it involves issues specific to the functioning of the SSM system (Issue 1) and issues of data collection and DR involvement (Issue 2). With regard to Issue 1, two areas of concern exist: 1) the SSM system currently does not allow ESY to be added to a student's IEP outside of certain dates; and 2) before these dates, the SSM auto-populates language in the IEP indicating that a student has not been determined eligible for ESY, even if the IEP team believes the student should be eligible. Doing so incorrectly sets forth the IEP team's determination.²²

²¹ It may be that the SSM system has other "blocks" that were not the subject of the Inquiry. For example, the transportation section of the Procedural Manual requires a nurse to approve certain elements of travel based on medical need. The Inquiry Team did not explore whether the SSM allowed only a nurse to approve such transportation.

²² It appears that the SSM system may auto-populate this language in some other cases as well, as shown in a set of screenshots provided by Kristy Brooks, a CPS counselor, during her testimony at the Public Hearing. It was not clear from Ms. Brooks' testimony what led the system to auto-populate this language, since it was not being entered outside the timeframe when the system should allow the entry of an ESY recommendation. It is possible that, in the situation

CPS uses three categories of designation for ESY services. Each has its own requirements, both for SSM purposes and with regard to DR involvement. The first, and most common, area of ESY service is in the area of “regression/recoupment.” This requires an assessment of whether a special education student will regress more than typical peers during the summer or other vacation period, and then not be able to recoup at an adequate pace following that time period to make sufficient progress. In the summer of 2016, CPS changed the SSM system to prevent an IEP team from finding a student eligible for ESY services for the next summer until January of that school year. The purpose of this change was to ensure that data had been properly entered into the SSM system to demonstrate that adequate recoupment had not occurred, according to CPS testimony.

In order to find a student eligible, the IEP team needed to take goal data every week from the beginning of school until either the student had returned to pre-summer levels or 10 weeks had passed, whichever came first, and enter that data into SSM. If the student did not recoup the skill within 10 weeks, she/he could be found eligible for ESY services, but not until the SSM system would allow that section to open (in January 2017). The IEP team could also use winter break and/or spring break data to show regression. In reviewing the training and guidance documents, the Inquiry Team noted that it was unclear, and quite possibly unclear to IEP teams, whether the regression/recoupment data from all three periods needed to be entered, or if the data from any one was sufficient.

The Inquiry Team found that if the data entry section of the SSM is not completed properly, by entering the data for each relevant week, the system will not allow the student to be made eligible. During the SSM demonstration, Ms. Kathleen Gibbons, who was identified by CPS as the key administrator to explain the SSM system to the Inquiry Team, was unable to answer the question of what would happen in the SSM system if a teacher had missed a week of data collection, and whether that would prevent the IEP team from making the student eligible for ESY services, at least without the intervention of an administrator who could enter the eligibility as a “special circumstance.”

A second potential way for a student to be found eligible for ESY eligibility also requires the entry of specific data. If the student is being made eligible in order to work on what is defined as a “critical skill,” the IEP team must enter other data, including an expectation that the student will be able to master the skill during the ESY time frame. The current guidance document says that data on special circumstances must be entered in a form titled “ESY Data Collection: Critical Skills Form.”²³

A third and final area of eligibility, “special circumstances,” did not originally appear to require additional data, but it could not be authorized solely by the child’s usual IEP team. The current guidance document says that data on special circumstances must be entered in a form titled “ESY Data Collection: Special Circumstances Form.”²⁴ This area, which includes due process

demonstrated, the student fell into another category, such as “critical skills” or “special circumstances” (which has special rules), described in this report.

²³ CPS 732.

²⁴ CPS 737.

settlements, needs arising from out-of-district transfers, and students with long periods of extended absence with regards to illness, must include authorization by a DR.

Before the time frame when the SSM system will allow IEP teams to consider ESY (prior to Jan. 17, 2017, in SY 16-17, and prior to Nov. 15, 2017, in SY 17-18 for regression/recoupment, and after spring break and prior to the end of the school year for critical skills), the ESY section will auto-populate to “Student X is not recommended for ESY at this time and team may meet to reconsider.” This language appears even if the IEP team believes that the student should receive ESY services, and the IEP team cannot change it. There are also reported instances of this occurring even during the time period when ESY should be open on the SSM system.²⁵ The Inquiry Team finds that the auto-populating language may therefore mischaracterize the determination of the team. The Inquiry Team finds that this language does mischaracterize the IEP team’s decision, when the team’s consensus is that the student is eligible for ESY. In addition, at least up through the date of the SSM demonstration given to the Inquiry Team, the Team finds that the SSM system would deny the IEP team access to the ESY section for regression/recoupment reasons after May 10 if an IEP team had not entered the supporting data into the SSM system prior to that time. Approval for ESY after that date required a higher level of administrator to unlock the system in this situation.

In her March 7, 2018, affidavit, Dr. Keenan noted that, like the Advocates, CPS was concerned about the significant drop in the number of students who had been found eligible for ESY services for the summer of 2017.²⁶ When asked at the Public Hearing, however, she was not able to describe what efforts CPS had undertaken to investigate the issue or what possible causes had been identified. She did note that there had been a lack of sufficient documentation of the need for ESY the prior year (SY 2015-16), and she also noted that perhaps requiring 10 data points (i.e., data over 10 weeks), as CPS currently does for regression, is too much.

At the Public Hearing, Dr. Keenan testified that the SSM system has now been changed, and the ESY portion of the IEP will be open, both for regression/recoupment and for critical skills, throughout the year, so that IEP teams may make ESY decisions when they have adequate data to do so. She testified that she believed that the SSM system would not require that an administrator or DR intervene to provide access to the regression/recoupment portion of the ESY section after May 10 this year or before November 15 next year. The Inquiry Team notes, however, that Dr. Keenan was unable to answer many questions about the operation of the SSM system, and she appeared unsure whether the changes had already occurred or were scheduled to be made at a later time. Ms. Gibbons testified that she believed that the SSM system had yet been changed to allow access after May 10 of this year, but she was unsure whether it had been changed to allow access before November 15 next year. Dr. Keenan was also unsure whether the system would still require the entry of a fixed number of weeks of regression/recoupment data before a student could be

²⁵ In her affidavit, Kristy Brooks states that in her capacity as case manager in IEP team meetings held between September – January 2017 that the ESY section would state, “This child does not qualify for ESY services,” and would not be editable. Therefore, students with disabilities who were in need of ESY would not have ESY services reflected in their IEP because the IEP team was blocked from entering it. Only after the DR approved the data *after* December of the school year could ESY be approved and the IEP finalized. Advocates 3040. Similarly, see Advocates 360, 3855-57, 4290-91, and the documents provided by Ms. Brooks at the Public Hearing, for instances in SY 2017-18.

²⁶ CPS 1948.

found eligible for ESY, which would mean that, for all practical purposes, ESY cannot be added to a student’s IEP before mid-November.

2. Paraprofessional Support

The SSM system will not allow an IEP team to include paraprofessional support for a student unless a number of pieces of specific data are entered, and a considerable amount of descriptive text is added, for multiple areas. In addition, the Principal (or, if the Principal is unavailable or has delegated the responsibility, the Assistant Principal) must either: 1) enter into the SSM system a confirmation that she/he has reviewed the data collection and does not need to attend the meeting; or 2) be in attendance at the IEP meeting so that she/he can be part of the discussion and serve as the Local Education Agency (LEA) representative. The language in the SSM system states that the Principal is confirming that the “[t]eam has sufficient data to consider paraprofessional support in the IEP.”²⁷ In addition, the SSM system will auto-populate the response to “Student needs para support” as “no” until an administrator has noted in the system that the team can answer this question in the affirmative. As with the ESY auto-populating language, the IEP team cannot change this language even if the team believes that the student needs that support. The Inquiry Team finds that, as with the ESY auto-populating language, this language may therefore mischaracterize the determination of the team and has, in fact, done so in some situations.²⁸ Requirements regarding data collection, excessive documentation in the IEP itself, and Principal and DR involvement, which are serious concerns with regard to the paraprofessional support process, are discussed in regard to Issue 2.

3. Dynamic Learning Maps (DLM)

With regard to participation in the DLM alternate assessment, the IEP apparently will not allow the IEP team to consider allowing a student to use the DLM in lieu of regular state assessment unless the DR has entered an electronic authorization for that section to open or is present for the discussion. It is the Inquiry Team’s understanding that, without this input, the option to consider the DLM will not be visible to the IEP team unless the student’s disability is cognitive impairment or autism, so many teams may not be aware that they can seek approval for a student whose eligibility is in another category, such as Developmental Disability, and who otherwise qualifies to use the DLM. Both federal and state law require that the state alternate assessment be used only by students who are identified as being in the lowest 1 percent cognitively of all students.²⁹ The Inquiry Team recognizes that there is a need for any school district to confirm that fact to ensure compliance with the law. Apart from one anecdote about a student who was not

²⁷ CPS 830.

²⁸ In her affidavit, Ms. Christine Palmieri, a CPS parent, describes repeated efforts to secure paraprofessional support for her son. She notes that despite the IEP team being in agreement that her son needed the support, that the IEP did not include paraprofessional support. School staff explained that there were “issues with the IEP document system,” and that this accommodation could not be reflected in the IEP until the Principal conducted observations and completed the request form. Advocates 3144-46.

²⁹ ISBE guidance aligns with the Every Student Succeeds Act of 2015 (20 U.S.C. § 1111(b)(2)(D)(i)(I)), which allows those students with disabilities who are cognitively in the lowest 1 percent to participate in a state-approved alternate assessment. (See <https://www.isbe.net/Documents/dlm-exception-guidance.pdf>.) Further, ISBE guidelines assist IEP teams with determining whether students should participate in the alternate assessment. (See https://www.isbe.net/Documents/DLM_Participation_Guidelines.pdf.)

authorized to take the DLM (and the team heard no evidence regarding whether that student met the 1 percent requirement), the Parties submitted no evidence that there is a systemic problem within CPS regarding the eligibility for or administration of the DLM, nor that the DRs are improperly exercising their review function in this area. Thus, the Inquiry Team finds that this is not an area of systemic concern.

4. Therapeutic Day School Placement

Another area in which the SSM system will not allow the IEP team to make a decision without the involvement of a DR is for placement in a separate therapeutic day school. The DR can, again, either electronically authorize the consideration prior to the meeting or can attend the meeting. The Inquiry Team heard from witnesses who described IEP teams reaching agreement regarding therapeutic day school placement, or wanting to approve such placements, but not being able to finalize the IEP because the DR was not present and had not given prior authorization in the SSM system for the team to act.³⁰ When the DR did not enter the authorization or was not present to authorize at the meeting, the SSM system would not allow an IEP to be generated with that placement, notwithstanding the consensus of the IEP team. The Inquiry Team finds that this could result in an IEP not properly reflecting the consensus of the IEP team present at the IEP meeting. Substantive issues regarding the involvement of the DR and concerns pertaining to burdensome data collection requirements placed on the IEP team are discussed in Issue 2.

5. Specific Learning Disability Eligibility

The SSM system also requires the entry of specific amounts and types of data before an IEP team can find a student eligible under the IDEA category of Specific Learning Disability (SLD). In September 2016, CPS issued guidance mandating that a student could be found eligible in this category only after the IEP team had collected a minimum of two five-week periods of Response to Intervention (RTI) data, known in CPS documentation and in testimony as MTSS (multi-tiered systems of support). In the eligibility portion of the SSM system, a staff member must enter data documenting two five-week periods of MTSS data in any area in which the student is being considered for SLD eligibility. If the correct amount of data is not entered, the system will not allow the team to find the student eligible in this category. Other forms of data are not sufficient to allow the IEP team to enter a determination that the student is eligible in this category.³¹ Again, this may result in the IEP team being unable to properly reflect its determination in the IEP.

³⁰One example of this is illustrated by Kristy Brooks, who described a student with a disability who needed a separate day placement. Ms. Brooks describes how the IEP team was in agreement at the meeting that the student needed to be placed in separate day, but that because the DR was not present to “sign off” and approve the placement, “the IEP team was barred by locks from inputting our decisions into the IEP.” Ms. Brooks testified that it took nine months to secure the placement for the student. Ms. Melanie Grant, the attorney for the family, provided in her affidavit that she was told by the DR that “additional procedures to authorize the separate day school were required.” Advocates 415.

³¹The information received by the Inquiry Team includes an email from CTU representative Sarah Chalmers to then Chief Education Officer Jackson. Advocates 4062. The email states that the parties reached agreement on contract language on MTSS, that teachers will not be required to “. . .input a type or frequency of MTSS data” and that teachers will be given a list of other types of data that they can bring to an eligibility meeting. It then lists data such as classroom observations. During meetings with CPS, both Dr. Keenan and Ms. Gibbons indicated that CPS had modified or was planning to modify the SSM to accept some data in different formats. It was not clear if this was only in one area or if it might apply to multiple areas such as paraprofessional, SLD eligibility, and ESY. Ms. Carlsen, a

In her March 7, 2018, affidavit and at Public Hearing, Dr. Keenan indicated that CPS had decided to change, or was considering changing, the SLD eligibility requirements to make the two five-week periods of MTSS data-gathering a “best practice” instead of a requirement.³² When asked at the Public Hearing, Dr. Keenan was not able to articulate clearly how the change would be implemented, at times suggesting that a decision had been made to change the process, and at other times saying that the change was only under consideration and that feedback was still being sought. Ms. Gibbons was similarly unsure in her testimony as to the status of this change. It appeared from their testimony that data other than MTSS data would not be considered sufficient for the SLD determination, and that the only change would be to the number of weeks of data that would be required. ISBE guidance states that SLD evaluation and eligibility cannot be withheld or denied simply because of the absence of RTI data – the data CPS calls MTSS data.

6. Impact on Parents, Students, and Staff

The purpose of the IEP document is to outline clearly what services, supports, accommodations, and placement are being provided to a student. If the IEP team cannot correctly enter this information into the IEP document, the document does not provide the parents with adequate notice of how their child is being served. Furthermore, when the SSM will not allow the entry of certain decisions at the IEP meeting, the parent must either return to a second meeting, in hopes that the system will then be available to enter the correct decision and leaving the student’s IEP unfinalized in the meantime, or must finalize an IEP that does not contain all of the IEP team’s decisions. The first option leaves the IEP unfinalized without memorializing the team’s consensus. The second results in a final IEP that misstates that consensus. Both options rely on the hope that the Team will be able to make corrections consistent with the IEP team discussion and decision at a later date.

When asked how a team was to proceed if certain sections could not be properly finalized, CPS witnesses stated that these two options – leaving the entire IEP in draft or finalizing it as is and returning to the table at a later date – were the only options available. CPS also noted that the IEP teams can enter information on the Notes Page, so that the IEP will contain the team’s views. Neither the SSM nor the Procedural Manual require teams to complete Notes sections, even where they have reached consensus on an issue but are unable to enter that decision in the IEP because of SSM restrictions. Ms. Gibbons testified that she believed the Notes Page does print as part of the IEP when it is completed if the “Notes” box is checked. When asked at the Public Hearing, Dr. Keenan stated that she did not know whether the Notes Page would normally print as part of the IEP, and at least one staff member witness testified that she believed that it would not. Because of this confusion, the Inquiry Team is concerned that the Notes Page and any consensus the IEP team may have reached would not be seen by any subsequent team when the IEP itself is being reviewed. Furthermore, where the language of the Notes Page is inconsistent with the text of the IEP itself, it is not clear that the Notes would have any legal significance. Finally, the Inquiry Team could find no instructional material or manual that advised or empowered IEP teams to use the Notes Page to override the language of a section of the IEP.

special education teacher in CPS, reported that an updated guideline was sent out on changes that resulted from the meeting but that denials continued to occur based on the absence of MTSS data. Advocates 3996.

³² CPS 1949.

Thus, the Inquiry Team finds that the potential use of the Notes Page does not sufficiently ameliorate the problem with auto-populating language or inaccessible sections. In addition, the Dissent Page, which IEP team members may use to voice disagreement with a decision of the IEP team and which some staff members have indicated could be used to document that the team does not agree with the auto-populated language, is not routinely printed as part of the IEP and must be printed separately. Again, this does not provide sufficient documentation of the IEP team's consensus in these cases.

The Inquiry Team heard from numerous parents and staff members, through affidavit submissions and through testimony at the Public Hearing, about how the difficulties with the SSM system resulted in IEPs not being finalized at the IEP meeting (and in some cases, taking weeks or months to finalize) or being finalized with incorrect information and a promise from the team to revise the IEP at a later time.

Parents also described the hardships of having to attend multiple meetings to accomplish something (such as ESY eligibility) that should have been handled at a single meeting, and the concerns with not being able to have a clear understanding of what was actually being provided and how the process was working.³³

The Inquiry Team finds that the problems with the SSM system were exacerbated by the lack of clear guidance to staff and the absence of adequate information to parents about the new processes and requirements that CPS enacted in 2016, as well as the subsequent changes to the process in the last 20 months. In both her affidavit and at the Public Hearing, Ms. Gibbons stated that the 2016 Procedural Manual was posted on CPS's external website only for one day, without an explanation as to why it was taken down. Generally speaking, the timeline of when the Manuals were made accessible to the public is concerning. In the Summer/Fall 2015, a new Procedural Manual was developed and only posted internally. The Winter 2015 Manual, which went into effect for the second semester of SY 2015-16, replaced the Summer/Fall 2015 Manual, but again, was posted internally only. The 2016 Procedural Manual went into effect during the fall of 2016 and was posted externally for only one day. It was not until the July 2017 Manual was issued that CPS kept its Procedural Manual posted externally.³⁴ Even then, parents were not advised of the existence of the Manual or told how to locate it. CPS did not provide parents with a way to know what the new processes and procedures were and how those changes would impact the decision-

³³ The Inquiry Team also heard concerns about the SSM system from parents and staff members during the public comment sessions. Teachers discussed the way that the 2016 changes to the SSM system impacted IEP development and drafting. Teachers also noted, in regard to the requirement that data be uploaded into the system, that the changes were not followed by training to educators on how to gather the data in a way that would be meaningful without being unduly burdensome. Parents and staff communicated that they had been at meetings where IEPs could not be finalized because certain permissions or authorizations had not been entered. A few parents also indicated that, within the electronic IEP form, they could not determine whether paraprofessional minutes for the student will be shared or dedicated. During the public comment sessions, some parents expressed concern over IEPs being left in "DRAFT" form at the end of an IEP meeting and then finalized *outside* of the IEP meeting because the SSM system could not finalize specific services (e.g., transportation, paraprofessionals, and ESY) without the sign-off of a DR or Principal who may not have been present at the meeting to commit the district to those services. Information gathered at public comment sessions was used by the Inquiry Team as background information to help the team understand concerns that families may have with the process.

³⁴ CPS 155-56.

making and IEP writing processes. The testimony of parents and advocates, as well as their affidavits, demonstrated their lack of awareness of these changes. The Inquiry Team finds that CPS did not provide parents with any information about the changes when they occurred and did not make its revised Procedural Manual available to the parent community during SY 2016-17.

Dr. Keenan expressed concern that the Manual was not published externally during SY 2016-17 and could not explain why that had not occurred. The 2017 Manual was posted on the CPS website in July 2017, but because the guidance documents were not posted, it did not contain an explanation of the changes discussed above. The current Manual (dated February 2018) was posted on the CPS website in February 2018, but Dr. Keenan and Ms. Gibbons were unaware whether any effort had been made to notify parents that the new Manual was now available. The staff members who testified also reported that CPS did not fully communicate the changes to them. CPS did conduct trainings, at least with case managers and Principals. But CPS was unable to produce records of who received that training, and there was apparently confusion about how and when various system update information was communicated. These concerns are applicable to Issue 2 as well, since parents and staff do not appear to have been well informed about the data collection and DR/Principal involvement requirements that were put into place in 2016 as well.

The Inquiry Team finds that during the relevant time period (November 2016 to present) the SSM system has been configured in a way that has prevented IEP teams, at times, from drafting and finalizing IEPs that reflect the team's consensus decision. Because this problem is built into the functioning SSM process, it is a systemic concern. The Inquiry Team also finds that these changes were not communicated to parents or staff in an effective or timely manner. While CPS has indicated that it will make changes in some areas of the SSM system (such as the date restriction on ESY decisions), it is not planning to change other areas and, even in the areas where changes are planned, CPS has apparently not yet finalized those changes. Without knowing the substance of those changes, it is not possible to determine whether they are sufficient to resolve the concerns. The Inquiry Team notes that CPS has indicated that it wants to reach out to parents, staff, administrators, and advocacy groups to engage them in dialogue and obtain feedback on the needed changes. The Inquiry Team strongly supports such a process.

ISSUE 2: Do CPS's documentation and data collection requirements result in unlawful denial or delay in the identification of eligibility or provision of special education and related services to students?

The second major issue of the Public Inquiry involves CPS's requirements for data collection and documentation in a number of the areas discussed above in Issue 1 – ESY, paraprofessional services, and placement in therapeutic day schools.³⁵ Additionally, the Inquiry Team considered the related issue of whether the data has to be approved by the DR or Principal, thereby giving that person the ability to prevent the IEP team from considering the issue simply by withholding authorization. This type of “approval” process would prevent the IEP team from serving its proper function as the decision-maker for services and placement. It would also prevent parents from participating in decision-making as required by IDEA.

1. Role of the District Representative and Principal in IEP Decision-Making

³⁵ Transportation is discussed separately in Issue 4, although these same concerns arise there.

The Inquiry Team has worked hard to understand the precise nature of the role of the Principal and/or DR in this process. This question is not clearly answered by the Manuals. Staff and even CPS administrators have had difficulty articulating the requirements when asked. Officials have, at times, stated that the DR or Principal is simply verifying that data has been collected. Other people, including CPS staff members, have reported that the Principal or DR is actually approving or rejecting the proposed service. At the Public Hearing, Ms. Gibbons described the process as a qualitative review, assessing not just that data exists, but that the data is sufficient to justify consideration of the support or service at issue. This confusion has led to conflicting approaches being taken by DRs and administrators when addressing these issues with IEP teams.³⁶ However, the documentation provided by CPS states, and the testimony of Ms. Gibbons at the Public Hearing confirmed, that there is some sort of qualitative review of the data by the Principal and/or DR in these areas. The reviewer is assessing, at a minimum, whether the data is sufficient to support the IEP team considering a decision in areas including paraprofessional support, ESY services, and therapeutic school placement. In these cases, the reviewer has the power, simply by instructing an IEP team that more data is needed, to delay consideration of these decisions.

This delay can happen because, in a situation where the Principal or DR questions the sufficiency of the data, she/he is supposed to notify the team of this and then attend the IEP meeting to participate in the discussion. In those cases, the DR or Principal acts as the LEA representative and, according to CPS officials, in that capacity has the authority to overrule the rest of the IEP team if she/he determines that the team's consensus would not provide free appropriate public education (FAPE) or would not provide services in the least restrictive environment (LRE). This authority could extend to each of the areas discussed in Issues 1 and 2, where Principal or DR authorization is needed for the IEP team to access the section in the SSM system. Thus, if the IEP team knows that the Principal or DR does not believe sufficient data exists to proceed, and the Principal or DR is the ultimate decision-maker at the meeting, then the team could well conclude that the meeting will be futile. While there may be occasions where the rest of the IEP team is able to persuade the Principal or DR at the meeting, the DR or Principal's assessment of the sufficiency of the data can control the outcome of the ultimate decision.

Because the limits of the DR or Principal's authority in this area are not clearly spelled out, staff members, parents, DRs, Principals, and even CPS officials seem to be confused as to the scope of the authority being granted. At a minimum, it is a substantive initial review, but not intended to limit the range of discussion at an IEP meeting. At the other extreme, it could be a way for the DR or Principal to veto IEP teams before the meeting can even occur. The Inquiry Team finds that the DR review process needs to be clarified, so that neither administrators nor IEP teams are led to believe that the DR or administrator has the authority to deny services or supports by withholding authorization for a team to consider a decision.

The role of the DR or Principal at the IEP meeting also needs clarification. In her March 7 affidavit, Dr. Keenan stated that the presence of a district-level administrator is a long-standing

³⁶ In Ms. Brooks' affidavit, she provides information regarding a Principal / DR's role in the approval / denial of services, see: Advocates 3049-50, 3052 (PowerPoint from case manager training); Advocates 3058; Advocates 3059 – 63). Other examples include Advocates 360 and 366; Advocates 414; Advocates 2215; and Advocates 3826-28.

practice, at least at IEP meetings where the issue of therapeutic day placement is being considered. The Inquiry Team does not dispute the right of CPS, or any other school district, to select the person serving as the LEA representative at the IEP meeting, provided that the person meets the federal and state requirements to serve in that role. The Inquiry Team has seen no evidence to suggest that the DR or Principal is unqualified to serve as a member of an IEP team, or as the LEA representative, or that the job description of a DR or Principal should not include participation in IEP meetings. That, however, is a separate question from whether, in a given case, a particular DR or Principal can overrule an IEP team's consensus. This question, regarding the scope of authority that CPS has given the DR or Principal in these situations, has raised additional concerns.

CPS officials told the Inquiry Team that the DR, when serving as the LEA representative, has the authority to overrule the rest of the IEP team in determining what services or placement will be provided to the student.³⁷ Ms. Gibbons and Ms. Bazer made this clear in numerous discussions with the Inquiry Team and asserted it in the CPS closing memo. As noted above, CPS requires that the DR be present (or to affirmatively authorize the IEP team to act without him/her) at IEP meetings where certain topics are being discussed (such as therapeutic day school placement). CPS explained to the Inquiry Team that this requirement allows the DR to gather more information, understand the IEP team's data and rationale more fully, and ultimately determine whether to commit the district's resources. Neither Party has identified any statutory or regulatory provision or agency guidance that would prohibit district staff from participating in IEP team decisions or from offering insight and guidance on the legal requirements of the IDEA, including the LRE provisions (which are essential to guaranteeing FAPE for students).

However, CPS clearly stated to the Inquiry Team that, if the DR disagrees with the rest of the IEP team, including all the other members of the CPS team, the DR has the authority to overrule the consensus of the team and deny the service. Ms. Gibbons, who has been with CPS for many years and who was deeply involved in the Corey H. proceedings, explained that this procedure allows the district to make sure that the LRE requirements of the IDEA are being met. She has suggested that the Corey H. monitor was aware of (and, by implication, approved of) this practice. The Inquiry Team has seen nothing indicating that the monitor or the court, in fact, rendered a judgment on this practice, and nothing in the affidavit submitted by the Corey H. monitor indicated that she had approved this veto power. The Inquiry Team has consulted with ISBE's Executive Director of the Special Education Services Division, Heather Calomese, who is responsible for overseeing special education practices and who was involved in the Corey H. matter for ISBE. Ms. Calomese stated that CPS's practice does not reflect ISBE's position on IEP team decision-making, nor was it approved or mandated by Corey H.

The Inquiry Team has heard testimony and reviewed documents that demonstrate that Principals and DRs have, in certain cases, made decisions either outside of an IEP meeting or over the objections of the rest of the IEP team, including the school-based members of the team.³⁸ As noted previously, the SSM system requires the DR or Principal to enter into the system that she/he has been notified and either will allow the team to consider the issue or will be required to attend

³⁷ It appears that CPS may extend this decision-making authority to Principals as well.

³⁸ See Footnote 32 regarding DR decision making occurring outside of the IEP team meeting; Advocates 3079; Advocates 3229-30; Advocates 2004; Advocates 158-59; Advocates 2185-86; Advocates 3856- 60; and Advocates 3887-89.

the meeting. The SSM system will not generate an IEP containing these services (paraprofessional support, therapeutic day school placement, some ESY services, some transportation services) without that DR or Principal input. This appears to be designed to facilitate the DR or Principal not just providing input, but acting as a gatekeeper on the allocation of district resources. The Inquiry Team finds that the role of the DR, and possibly the Principal, in overriding IEP decisions is a systemic concern because the practice is embedded in CPS's procedures and, therefore, has the potential to affect decision-making for students needing services in the areas in which DR approval is needed.

2. Paraprofessionals

Paraprofessional support is added to a student's IEP for a variety of reasons. Some students need support with medical and daily living issues (toileting, feeding, medication, etc.). Other students need support with academics, which may include assistance with directions, task-completion, or other classroom activities. Finally, some students need additional behavior support, either inside or out of the classroom. In SY 15-16, CPS paraprofessionals provided just over 14 million minutes of services each week to special education students throughout the district. By SY 17-18, the number of service minutes had been cut in half, to just over 7 million minutes per week. When asked about this at the Public Hearing, Dr. Keenan indicated that the drop might be attributable to the change from SY 15-16 to SY 17-18 in how paraprofessional support is listed on IEPs for students in low-incidence cluster programs. She posited that, because some paraprofessional support is now considered programmatic, it is not separately listed on student's IEPs and, therefore, the drop in IEP minutes of support might simply reflect that these minutes are no longer noted on IEPs. She did not testify to how she had reached this conclusion, nor whether any actual study had been done to analyze the drop and verify that it was due to the shift to programmatic support on some IEPs.

Several parents, advocates, and staff members have suggested that the challenges of the new documentation requirements have played a role in students losing needed paraprofessional support. They point to concerns with the Paraprofessional Justification form (sometimes referred to as the "Para-J" form), and the documentation it requires. Beginning in the fall of 2016, IEP teams were required to gather a significant amount of data before they could consider a request, either from the parent or from the school-based team members, for paraprofessional support for a student. The new documentation requirements applied regardless of whether the child had had paraprofessional support in the past. These documentation requirements have changed some over the past two years, as CPS has responded to concerns raised by teachers and the Chicago Teachers Union (CTU).

The September 2016 Manual requires a number of steps prior to a student being considered for paraprofessional support for either academic or behavioral support. The first step is that staff must collect 10 days of data in each area of support. Each general area of support (academic or behavioral) also contained a checklist of several sub-areas describing the needs of a child. Staff had to enter data for the relevant number of days for each general and sub-area of support. Staff also had to make the data entries outlined above for each academic area in which they believed a student needed support (e.g., math, language arts, science, gym) and each setting (e.g., classroom, hall, lunch period, etc.) where the student worked on that academic area. Similarly, where the staff

believed the student needed behavioral support, they needed to enter data on each of the sub-areas in each of the settings (e.g., classroom, hall, lunch period, etc.) where they identified the need for a paraprofessional. Only after all of this data collection was completed would the documentation be submitted to the Principal for review.

Even with cutting and pasting of language where the same data was relevant to different subjects or classrooms, this first step of data collection proved burdensome for staff. For example, in one case the paraprofessional justification form ran to 66 pages.³⁹ One witness, Sally Tabatsalis, described that the data collection requirements caused her to spend three hours per student for every form needed for each of her 13 students.⁴⁰ It also resulted in multiple repetition of the same language 30 to 40 times in an IEP, and IEPs involving paraprofessionals to be expanded to by 10 - 20 pages.⁴¹ A special education teacher, Natasha Carlsen, stated in her affidavit that these data requirements required her to collect and enter information for a total of at least 900 data points because she had nine students who needed a paraprofessional in SY 2016-17.⁴²

In the second step of the process, the Principal had to verify in writing that the student received high-quality Tier 1 instruction and Tier 2 and 3 interventions consistent with the CPS MTSS “framework.”⁴³

The final step of the process originally required a Principal or Assistant Principal to observe a student twice (once for students with an existing aide) to support the need for an aide. These observations had to occur before provision of a paraprofessional could be discussed.⁴⁴ This Principal observation requirement no longer appeared in the July 2017 or the February 2018 Manuals. The July 2017 Manual omitted the observation requirement, but it still mandated that the Principal must confirm in writing that four conditions were “met” before the IEP team could discuss paraprofessional requests for medical or personal care. It required that the Principal confirm in writing that the same four conditions and three others were met before the IEP team could discuss paraprofessionals needed for academic or behavior.⁴⁵ The February 2018 Manual made two significant changes to these requirements. First, it changed the term “Principal” to “school administrator,” a term which includes Assistant Principals.⁴⁶ Second, the Manual stated that when a paraprofessional was for academic or behavior support, “the school administrator must . . . [missing word] documentation provides five unique days of data and other relevant information for the identified area(s) of support to inform the IEP team’s discussion.”⁴⁷ The missing words do not describe what the administrator is to do regarding the documentation, thus heightening the confusion as to the Principal’s actual role.

³⁹ Advocates 3882, 2898-3963.

⁴⁰ Advocates 3925.

⁴¹ Advocates 4560-61; Advocates 2018-40; Advocates 2257-75; Advocates 3157-3168; and Advocates 3880 and 3897-3963.

⁴² Adocates 3990.

⁴³ CPS 368-71. The SSM required that the Principal confirm that these MTSS interventions be provided. Advocates 4012.

⁴⁴ CPS 371.

⁴⁵ CPS 485.

⁴⁶ CPS 617.

⁴⁷ CPS 677 (missing word in original).

As noted in several affidavits, school staff found this extensive data and approval process burdensome and found that it did not provide meaningful information on students.⁴⁸ Dr. Keenan stated that CPS administration met with the CTU on issues, including the paraprofessional justification form, in the fall of 2016 because special education staff were complaining about the burdensome nature of the data entry. As a result, CPS reduced the number of days of data needed from 10 days to five. In addition, the SSM system was changed to allow data to be uploaded, rather than entered individually into a grid in the SSM system.⁴⁹ CPS included the change to five days in the December 2016 Guideline on paraprofessionals.⁵⁰ It did not appear in the Procedural Manual until the July 2017 version.

During the inquiry process, Ms. Gibbons testified that MTSS data was not required for paraprofessional justification. This was consistent with verbal statements made to the Inquiry Team during its meetings with CPS. However, the requirement has remained in the Manual, and there is no indication how principals, other staff, or parents would have learned that the requirement had been dropped.⁵¹

During her testimony, Ms. Gibbons also outlined a shortcut to the need for having data uploaded for each subject area for each area of concern. She stated that simply checking a box that said the student needed an aide for Independent Functioning rather than for each academic area would eliminate the need for the kind of detailed input outlined above. The “shortcut” appears to be a way to shorten the time to upload data, but it is unclear whether this change was communicated to staff at any trainings on the paraprofessional justification process. It does not appear in either the Procedural Manual or Guidelines documents as a workaround.

A related concern is the requirement that the Principal either confirm that the Guidelines have been met (the 2017 Procedural Manual) or confirm (if that is the meaning of the missing word in the Manual) that “[d]ocumentation provides five unique days of data and other relevant information for the identified area(s) of support to inform the IEP team’s discussion. . . .” (February 2018 Manual).⁵² The Parties disagree about the actual role of the Principal in this regard. Some of this is due to conflicting views within CPS about this role, as discussed in Section 1.

The Advocates and some of the parent and staff witnesses have stated that the Principal acts as a gatekeeper, judging the quality of the data before agreeing to allow the IEP team to consider the request for a paraprofessional or making an independent assessment of need. This is consistent with provisions through the July 2017 Manual, which was only superceded in February 2018, but it is not clear whether the SSM treated the Principal as the gatekeeper during the time period from July 2017 to February 2018. What is not in dispute is the fact, as noted in Section 1, that if the Principal does not enter in the SSM system that she/he has reviewed the data, and either finds it sufficient or plans to attend the meeting, the SSM system will not allow the IEP team to

⁴⁸ Advocates 314 and 350; Advocates 2187-88; Advocates 2257-75; Advocates 3120; Advocates 3519; Advocates 3562, Advocates 3825; Advocates 3858-60 Advocates 3862-65; and Advocates 3879-3883.

⁴⁹ One affiant stated that during the December training that followed these changes, a District Representative said that not completing the specific form identified at the meeting could lead to a denial of any school appeal for paraprofessional support. Advocates 3990-91. The Inquiry Team did not hear this reported by other witnesses.

⁵⁰ CPS 31.

⁵¹ CPS 482-83; CPS 582-83, CPS 677.

⁵² CPS 485; CPS 677.

finalize a decision to provide paraprofessional support. Thus, by withholding that authorization or by requiring that more data be collected, the Principal can effectively deny or delay the IEP's team's consideration of paraprofessional support.

At a minimum, the Manual section on administrator approval is confusing and allows for the varying interpretations. Just as importantly, if not more so, the requirement of Principal "confirmation" before an IEP team can discuss the paraprofessional issue, and the SSM's requirement for Principal confirmation, creates the potential for exactly the kind of occurrence that parents and school staff described during the Inquiry – where an IEP team agrees on the need for a paraprofessional and discusses the data it has, but is then unable to give the student the paraprofessional because a Principal is either not present at the meeting or decides that she/he will not "approve" a paraprofessional. As discussed in Issue 1, when this occurs, the SSM system auto-populates with language that the student does not need a paraprofessional.

Additionally, changes to the budgeting process in SY 16-17 and SY 17-18 exacerbated the challenges of the Principal's role in the paraprofessional process.⁵³ In short, the Principal's authorization to consider a dedicated paraprofessional generally meant adding a position to the school's budget. In such cases, the Principal would often have to file a budget appeal to get the additional paraprofessional position filled. If the appeal was denied, the Principal would have to consider ways of meeting the student's needs without additional funding. In his testimony, CPS Senior Budget Manager Gregory Volan, who worked on appeals in both years, stated that the appeals committee did not do follow up to determine whether or how a school ultimately covered the paraprofessional requirements of students if the appeals committee denied an appeal.

CPS submitted affidavits from two administrators who support the current data collection requirements. An Assistant Principal's affidavit states that the requirements around data collection have instilled "best practices" amongst teachers, ultimately resulting in more data-driven decision-making.⁵⁴ A Principal's affidavit provides that the data requirements have helped IEP teams make "evidence-based decisions."⁵⁵

The detailed description of the paraprofessional data collection and principal authorization makes clear that these processes required an enormous amount of time and effort, the requirements for the process were not well-communicated or explained, and the process as described by the CPS administrators did not always match the language of the Procedural Manual. As a result, the Inquiry Team finds that the complex requirements that CPS added to the process beginning in 2016 made it burdensome on staff, leading to situations where IEP teams were sometimes unable to provide paraprofessional support or were unreasonably delayed in providing that support to students they found to be in need of that service. In addition, the Principal authorization process involves some element of qualitative review and has the potential to act as a delay or roadblock to consideration of this support. The Inquiry Team has received affidavits and testimony that these problems have occurred in various cases throughout the district.⁵⁶ The data collection and

⁵³ The budget process is described more fully in Issue 3.

⁵⁴ CPS 2154.

⁵⁵ CPS 2156.

⁵⁶ Advocates 160; Advocates 175-76; Advocates 313 and 38, Advocates 3858-60; Advocates 3862-65; and Advocates 3879-3883.

principal authorization requirements were mandated districtwide, which the Inquiry Team finds has created a systemic concern.

3. Extended School Year (ESY)

The Advocates, both in their narrative statements and in affidavits submitted by various witnesses, described the data collection process that is required before ESY can be provided to a student. Beginning in SY 16-17, the IEP team was required to gather extensive documentation to find a student eligible for ESY services based on regression/recoupment. A member of the team (generally, the special education teacher) was required to collect progress-monitoring data once a week, starting the first week of school, on each of the student's goals and to continue the weekly monitoring for up to 10 weeks. The teacher was required to continue progress-monitoring each week until the student had returned to the progress level she/he was at when the prior school year ended (i.e., when the student "recouped" the prior level of mastery) or until 10 weeks had passed, whichever came first. If the student did not recoup within 10 weeks, CPS used this information to confirm that the student had a serious regression issue, thus making the student eligible for ESY.

If the team does not have regression/recoupment data for the fall, the SSM system does allow the team to enter similar data from the period following winter and/or spring break. When questioned, however, CPS officials could not explain how that would suffice for a student who might not suffer serious regression following only a one- or two-week break, but who did suffer regression following the full 10- to 12-week summer vacation period.⁵⁷

The IEP team need only monitor those students who they anticipated would need ESY services and only on those goals where the team anticipated a regression issue, according to CPS officials. It was unclear how the team would discern this, especially since most students would be unknown to a new teacher at the beginning of a school year. Furthermore, the Inquiry Team heard from staff members that IEP teams were not given training in this area and thus were not aware that they did not have to gather data on every goal. Thus, it appears that many teachers would be required to gather this data on a large number of students in a large number of areas to ensure that data would be available if ESY became an issue. This added a significant amount of data collection work for staff members. At least one cluster program staff member reported that she simply could not gather this data for all of the students in her class and she thus did not have the necessary data to make all of the students eligible for ESY services who should have received it.⁵⁸

As noted in the discussion of Issue 1, CPS officials were unsure whether the SSM system would allow a student to be made eligible, even if the team determined that the student needed ESY services, if even one week of data had been missed in the 10-week period. Officials could not readily answer how a student or teacher absence would affect this weekly data-gathering obligation. As noted in the discussion in Issue 1, this is by far the most common category for ESY

⁵⁷ The Inquiry Team also had a concern regarding the impact of the data collection requirement on a student who had received ESY services the prior summer. Where a student had received ESY services to prevent regression, one would not expect that student to show significant regression the next fall. When asked how that student would then be eligible the next year for ESY, a service that had been shown to have the desired effect, Dr. Keenan indicated that the team could use data from winter or spring break, even though those breaks are only one to two weeks long and may not cause significant regression.

⁵⁸ Advocates 3120.

eligibility and, therefore, this data-gathering requirement affected the largest percentage of students eligible for ESY.

The second category of ESY service is “critical skills.” These are skills at a critical stage of development that need continued work over the summer so that the window of opportunity for mastery is not lost. There was some dispute at the Public Hearing over which categories of skills fall into this category. The PowerPoint slides CPS provided to the Inquiry Team indicate that only “self-sufficiency” skills qualify.⁵⁹ Academic critical skills are identified as falling in the ESY category of “special circumstance” on the DR review form. When asked by the Advocates, Ms. Gibbons indicated that a critical behavior skill could qualify under “critical skills,” but there is no guidance document or Manual provision that would provide that information to the IEP team or the Principal. Teams are required to gather data on the need for continued work on the critical skill and, according to the PowerPoint information, the Principal is required both to “review the data” and to “affirm the need” for this service.

At some point, it appears that the SSM system was changed to require only that the IEP team confirm to the Principal that the student is likely to achieve mastery. However, the Inquiry Team has seen no document that clearly notifies IEP teams and Principals that Principal review and affirmation is no longer required in this category. The most recent CPS document on this issue, the February 2018 Guideline, says that the school administrator (Principal or Assistant Principal) must “[c]onfirm data collected for critical skills is sufficient to inform the IEP team’s discussion about the student’s need for ESY services based on critical skills.”⁶⁰ It is difficult to see how a team could consider ESY on this issue if an administrator determines that the data collected is not sufficient.

The DR must authorize the IEP team to use the final category of ESY services, “special circumstances.” The current Guidelines and Manual require collection of data for each of the three special circumstances categories.⁶¹ As noted in other areas, CPS officials testified inconsistently as to the meaning of this “authorization.” Although Dr. Keenan at times referred to it simply as a verification that data existed, Ms. Gibbons and the CPS staff members who testified or submitted affidavits on behalf of the Advocates verified that the DR was making a qualitative, as well as quantitative, assessment of the data. Indeed, there is an email in the record from CPS attorney Katie Ilijic stating that ESY had been “approved” after a meeting, and the IEP was therefore being finalized with that service.⁶² This clearly shows that DRs were, in at least some circumstances, making decisions outside of the IEP meeting to approve or confirm decisions that the IEP teams were seeking to make during IEP meetings.

In her testimony at the Public Hearing, Dr. Keenan stated that CPS was concerned with the drop in ESY eligibility in the summer of 2017. One of the issues she identified as a potential cause of the drop was the need for 10 data points for each goal monitored for regression purposes. The

⁵⁹ CPS 1327.

⁶⁰ CPS 119.

⁶¹ The February 2018 ESY Guideline requires IEP team members to collect data on mental/physical condition, significant disruption, or due process hearing/settlements, etc. It additionally requires that the DR confirm such data collection. CPS 119, 122.

⁶² Advocates 368.

Inquiry Team agrees with this concern and finds that the data collection and authorization requirements have had a negative impact on eligibility for ESY services districtwide and, therefore, have created a systemic concern in this area.

4. Therapeutic Day School / Separate Day Placement

A separate day school placement is one of the most restrictive placement options for a student with a disability and is considered by an IEP team only after it has been determined that the district cannot meet the behavioral and/or educational needs of a student in a less restrictive setting. The Inquiry Team heard from parents, advocates, and educators that not only are data and documentation requirements burdensome in some cases and unclear in others, but additionally, that the requirement of DR authorization results in decision-making occurring outside of the IEP meeting, thereby improperly excluding parents from the process.

In both SY 16-17 and 17-18, IEP teams have needed data and documentation showing that a student met the following three criteria: highly intensive behavior, frequent behavior, and MTSS effort without success in order to justify placement of a student in a therapeutic day school for behavioral needs. This last criterion requires a minimum of five weeks of function-based interventions, holding a meeting to make necessary changes/additions to the student's Behavioral Intervention Plan (BIP), and then implementing and documenting, at a minimum, another five weeks of interventions.⁶³ Following this, a Principal must verify the sufficiency of the data and a DR must approve it prior to effectuating placement. The documentation requirements are cumbersome and extensive. The IEP team must collect at least 10 consecutive weeks of behavioral data and hold an IEP meeting halfway through the process to revise the BIP. This means that after a parent requests such a placement or the IEP team begins to consider it, more than an entire quarter of the school year will pass before the IEP team meets to decide the request. In one instance, outlined in the affidavits of Ms. Brooks and Ms. Grant, it took an entire school year of data gathering before the DR determined that enough data had been collected to justify a change of placement.⁶⁴ Although Ms. Gibbons testified at the Public Hearing that, in more urgent cases, the DR can grant an exception to the data collection requirements here, that provision is not included in the Procedural Manual, and thus it is unclear how parents or staff members would be aware of that option.

The requirements for therapeutic placement for academic or functional reasons are less explicit. The Procedural Manuals for both 2016 and 2017 provide that when considering therapeutic placements for academic reasons, "the student's academic or functional needs are considered to be highly intensive." The Manuals do not appear to require specific types of data and documentation to support such a finding.⁶⁵

Additionally, the process for securing a therapeutic day placement for students who need it is complicated by the additional barrier of DR approval/authorization for the IEP team to move forward. In Dr. Keenan's March 7 affidavit, she maintains that DRs do not "sign off" or make unilateral decisions on services outside of the IEP process, but must be involved in IEP decisions

⁶³ CPS 579 and CPS 671.

⁶⁴ Advocates 414-15; and Advocates 3041.

⁶⁵ CPS 579, CPS 671, and Advocates 12-13.

for which the local school LEA representative cannot commit the service, including especially therapeutic day school placements. As discussed in Section 1, Dr. Keenan provided in her affidavit and Ms. Gibbons testified at the Public Hearing that the DR is empowered, at the IEP meeting, to overrule the rest of the IEP team if she/he believes that the therapeutic day placement is too restrictive.⁶⁶ The Advocates provided testimony and evidence that supports their claim that, at least in some situations, DRS are also making these decisions outside of IEP meetings.⁶⁷

The Inquiry Team finds that the requirement for DR authorization has the potential to interfere with the IEP team decision-making process. The involvement of the DR may require that the meeting be postponed, delaying the decision. In addition, in cases where the DR either withholds authorization or makes decisions outside the IEP meeting, this has the effect of excluding parents from the decision-making process. The Inquiry Team finds, based on affidavits it has received, that this has, in fact, occurred in some cases. Because of the nature of the process and the rigidity and time-consuming nature of the documentation requirements, the Inquiry Team finds that the process utilized in this area has created a systemic concern.

5. Impact on Parents, Students, and Staff

As noted in the discussion of Issue 1, CPS did not make its Procedural Manual available to parents or the public during SY 16-17. It did post the July 2017 Manual on its website, but the guidance documents, which contained the information regarding the documentation and data collection requirements for each of the areas discussed above, were not included in the Manual and were not made available on the CPS website until February 2018, when an updated version of the manual was also posted. To the extent that the Guidelines and FAQs clarify CPS's procedures on the above areas, the failure to post the Guidelines contributed to the fact that parents were generally unaware of the data/documentation requirements, and the need for Principal or DR review or verification of the documentation. This meant that parents would not know to ask for data to be gathered prior to requesting consideration of certain services, supports, or placements. In addition, the ability of the DR or Principal to delay or prevent the IEP team's consideration of these matters, if the required authorization was withheld or delayed, had the potential to interfere with parents' rights to be full participants at IEP meetings. The Inquiry Team heard individual accounts from parents and staff of instances where this, in fact, occurred. The Inquiry Team cannot determine the extent to which this has occurred, but CPS has created a system in which the DR and Principal have clear power, through use of the review process, to prevent timely and full consideration by IEP teams in these areas.⁶⁸

⁶⁶ CPS 1946.

⁶⁷ Advocates 359-60; Advocates 414-16; and Advocates 3042.

⁶⁸ During public comment and in the affidavits submitted by parents and staff members, concerns were raised about the burdensomeness of the added data and documentation requirements. The Inquiry Team heard from staff members who reported that the data collection requirements of the Paraprofessional Justification Form required burdensome data and documentation efforts, which resulted in the delay or denial of this service to students. Additionally, the teachers reporting feeling unsupported with regard to the data and documentation changes, and feeling that they were not provided with guidance or training in how to gather the data being sought in many of these areas, or how to properly enter the data being collected. Similarly, no parent or advocate provided any information regarding CPS communication or training on simplified approaches like the one discussed in Ms. Gibbons's testimony, regarding the use of an "independent functioning" category, rather than individual academic subjects, as a method to reduce the amount of data required for the paraprofessional justification form. The Inquiry Team also heard from parents and staff during public comment sessions that they believed that the data and documentation requirements for ESY,

As discussed in Issue 1, parents were not given adequate information about the new procedures and requirements that CPS implemented or about the nature and type of data that was now being required in the areas discussed in this section. The Inquiry Team finds that this lack of information had a systemic impact on the ability of parents to participate meaningfully in the discussions of these issues.⁶⁹

The issue is not the need for data itself. Both Parties agree, as does the Inquiry Team, that decisions must be made on data, and even prior to SY 16-17 decisions were being made based on data. Thus the Inquiry Team does not find that requiring IEP teams to gather data and to make meaningful data based decisions led to delays. The concern in this area is not with the need for data and documentation; it is with the nature of the process that CPS created in 2016.

The Inquiry Team finds that during the relevant time period (November 2016 to the present) CPS's documentation and data requirements have caused systemic concerns with the identification of eligibility and provision of special education and related services to students. This results from at least two sources. The first is the complex and often burdensome process for data collection and documentation discussed earlier. This process also has the effect of under-valuing other sources of data because these cannot be quantified into the system that CPS has created. Teams may still consider, once the IEP meeting is convened, information provided by parents, evaluations by outside providers, and narratives from staff. However, that information can never be sufficient on its own to trigger inclusion of these services or supports (and, in the case of SLD, an eligibility determination) into the IEP in the first place. Thus, many critical types of data may be given less weight than they should.

The second source of the problem is the CPS requirement, outlined in trainings and the Procedural Manuals, that DRs and Principals must either approve services to students in the above areas or confirm that sufficient data has been uploaded for an IEP team to consider whether a student should receive such services. This requirement can result in the unnecessary delay or the actual denial of these services and supports if the required DR/Principal is not in attendance at IEP meetings, but has failed to authorize the team to consider the matter, or when the DR/Principal makes the decisions outlined above either before or after the IEP meeting, rather than at the meeting itself. It may also occur when the DR/Principal is present at the domain, eligibility, or IEP meeting and overrules the consensus of the IEP team. Furthermore, the Team is concerned that the requirement that the Principal authorize consideration of these issues by the IEP team may prevent parents from having these issues discussed at the IEP table at all.

The Inquiry Team also finds that the way in which CPS introduced the changes and the lack of clear guidance and training for staff, contributed to the problems in this area. The trainings themselves appear to have been limited in scope and attendance, thus making it difficult to make staff aware of all the changes they would encounter. This concern is evident as well in the fact that during the Inquiry, CPS officials have referenced significant process changes, such as the

transportation and paraprofessional supports are excessive and burdensome, and that these requirements resulted in the delay or denial of services.

⁶⁹ Representative Crespo, in his introductory remarks at the January 19 House Committee Hearing, pointed to the importance of allowing input from parent groups.

elimination of the need for MTSS data for paraprofessional support, that have not been reflected in the Manuals, including the Manual issued just two months ago.

CPS has indicated, as it has with the SSM system, that it has made and will continue to make changes in some areas of the documentation and data collection requirements. At a meeting with the Inquiry Team, CPS said that it was considering/implementing changes in the paraprofessional justification process that would simplify and shorten the justification form and allow uploading of data in a narrative form. At the Public Hearing, Dr. Keenan indicated that less data may be required in the ESY area in the coming year. In her March 7 affidavit, Dr. Keenan states CPS's willingness to change data collection requirements for SLD as well in both the Procedural Manual and the SSM system to have the collection of 10 weeks worth of MTSS data be a best practice and not a requirement.⁷⁰ These changes, if they in fact occur, would help alleviate some of the concerns noted.

ISSUE 3: Does CPS's budgeting system result in unlawful denial or delay in the provision of special education and related services to students?

1. General Concerns About Budget And Budget Appeal Issues

The Advocates raised the concern whether the 2016 change to student-based budgeting (SBB) resulted in the unlawful delay or denial of special education and related services to students with disabilities. The Inquiry Team received substantial information on the CPS budget from Mr. Gregory Volan, who also provided an affidavit and testified about the budget issues at the Public Hearing. Prior to SY 16-17, special education positions at each school were funded from the Office of Diverse Learner Supports and Services (ODLSS budget), and positions were then allocated to each school. A major change in SBB for SY 16-17 resulted in CPS switching from a position allocation to a funding allocation process for special education. CPS combined each school's special education funding with general education funding into a single allocation. The school's special education budget for that year was based upon the school's prior year special education staffing. CPS then reduced the school's total budget allocation by 4 percent. CPS's central special education budget continued to pay for related service providers. The central budget that year provided funding for one teacher and one programmatic paraprofessional for mild and moderate cluster⁷¹ classrooms, and one teacher and two paraprofessionals for severe/profound classrooms.

In SY 17-18, the CPS central special education budget funded one additional programmatic paraprofessional in each cluster classroom and continued to fund related service providers from the central ODLSS budget. ODLSS determined the special education funding amount for each school by conducting a school-by-school review to ascertain the number of teachers and paraprofessionals needed at each school in addition to the cluster allocations.

⁷⁰ CPS 1949.

⁷¹ Cluster classrooms serve students with low-incidence disabilities. These classrooms are divided into those that serve students with mild to moderate needs and those that serve students with more severe needs.

Mr. Volan testified that the CPS central office instructed schools in both years to meet special education needs first, and then to build their general education needs around that.⁷² Other documentation the Inquiry Team has received confirms that the “fund special education first” process was, in fact, the instruction that schools received in both years. CPS expected Principals to use the SBB funding to staff both general education and special education teaching and paraprofessional staff, with the exception of the cluster staff positions described above and a small number of other centrally funded positions.

The Advocates have submitted a letter that CPS CEO Janice Jackson sent to all Principals in late February or early March 2018, stating that two specific changes will be made to the budget process in SY 18-19. Each school’s funding will be determined next year based on its 20th day enrollment from SY 17-18. Special education staff will be provided as a position allocation and not a funding equivalent.⁷³ Mr. Volan was not able to provide additional information when asked at the Public Hearing to explain these commitments, when they would go into effect, and what guidance would be provided to schools.

Principals who believed that their schools needed additional funds in both SY 16-17 and SY017-18 could file a budget appeal. These appeals went first to the Network Chief, who would either deny the appeal or refer the appeal to the Budget Appeal Committee. The Budget Appeal Committee consisted of administrators from various departments, including ODLSS, who reviewed the appeal and determined if the school would be granted additional funds. There were appeals made for non-special education staff, but a significant number of the appeals in each year were for funds to hire additional special education teachers and paraprofessionals.

In SY 16-17, CPS schools made 118 appeals for paraprofessionals (some requesting more than one paraprofessional), of which approximately 27 were approved, four were partially approved, and 91 were denied. There were also 74 appeals for special education teachers, of which 11 were approved, five were partially approved, and 63 were denied.⁷⁴

Through mid-February in SY 17-18, CPS schools have filed 94 appeals for paraprofessionals, of which 52 were approved, 15 were partially approved, and 27 were denied. In the same time period, there have been 63 appeals for special education teachers, of which 23 were approved, 19 were partially approved, and 21 were denied.⁷⁵

A school was required to do without the requested funds if an appeal was not granted and would have to either meet the need with existing staff or use other funds to hire the staff. Some appeals decisions clearly indicated that the Budget Appeal Committee believed that funding for

⁷² A document referred to as SY 17 Budget Packet contains an outline of the budget process. Advocates 4014. For some reason, this document was not provided in the CPS submissions.

⁷³ Advocates 4675.

⁷⁴ The calculations provided are based on the CPS Dashboard of Appeal Decisions and the Appeal Decision Documents of each school in SY 16-17. CPS 2840-56; and CPS 2884-3081. Denials consist of those “Denied by the Appeals Committee” as well as those that were “Resolved by Network.” All appeals, regardless of the school, are treated as separate appeals by date of request per the Dashboard of Appeal Decisions.

⁷⁵ The calculations provided are based off the CPS Dashboard of Appeal Decisions and the Appeal Decision Documents of each school in SY 17-18 up and through February 27, 2018. CPS 2857-2883; and CPS 3082-10. The above does not include appeals that are currently pending review.

special education positions could come from “closing” general education positions, such as an Assistant Principal.⁷⁶ In others, there were references to a school having Assistant Principal or clerk positions beyond the needs set forth in CPS Guidelines. The Inquiry Team was unable to get a clear understanding of whether there were situations in which non-special education staff were terminated to free up funds to hire special education staff.

In several of the denied appeals, the Principal specifically noted that the school was unable to provide for the needs of all of its special education students without the additional funds. For example, Blaine Elementary School submitted an appeal in SY 16-17 for funding for a paraprofessional for a student who required this support. The Network Chief had spoken with the Principal and agreed that Blaine did, in fact, need the additional funding to support a shared paraprofessional for the student. The Budget Appeal Committee denied the request, stating that the “school has underspent their DL budget from original allocation.”⁷⁷ Similarly, at Burke, the Principal submitted an appeal for two paraprofessionals due to an influx of students with IEPs requiring paraprofessional support because existing staff was unable to cover minutes required by both current students and the new students. As in the Blaine case, the Network Chief supported the request and stated, “The school desires to be in compliance with the students’ IEPs.” However, the Budget Appeal Committee denied the appeal, noting that the DR would need to review “IEP and para needs as there is an over-relevance (likely meaning, *over-reliance*) of para support.”⁷⁸ At Carver, the Principal requested one special education teacher for “eight students from K-2 who have over 500 IEP minutes that are not being delivered on a daily basis.” The Network Chief again agreed with the Principal’s justification, but the Budget Appeal Committee denied the request, stating that Carver “underspent their DL allocation” and that “the case manager’s schedule shows there is room to support uncovered minutes.”⁷⁹ The Budget Appeal Committee did not explain how a case manager could cover the 2,500 weekly minutes of needed special education.

Many other denied appeals also contained counts of how many minutes of special education support or services the students were actually missing. When questioned at the Public Hearing, CPS officials reported that they were aware of no specific efforts made to verify the missing minutes or to compensate for the missed minutes. They could not explain what steps, if any, were taken to ensure that there was adequate support if an appeal was denied. Mr. Volan, who served on the Budget Appeal Committee the last two years, stated that the DR might be sent to the school to help look at schedules, but he reported that the Budget Appeal Committee did not undertake any follow-up either year to ensure that the missing services were provided.⁸⁰

⁷⁶ CPS included information to schools about sizes and recommended Assistant Principal allocations in its materials. Advocates 4034.

⁷⁷ CPS 2886-87.

⁷⁸ CPS 2888-89.

⁷⁹ CPS 2890-91.

⁸⁰ In 2017 and again in 2018, the Chicago Principals and Administrators Association administered a survey to assess how school leaders felt about the adequacy of their school budgets. The overwhelming majority of those who responded reported that the SBB funding provided to their schools was inadequate and that resources allotted to one population were being taken to serve another (both from general to special education and vice versa). In the 2018 follow-up survey, the majority of administrators reported that they did not feel as though directives from the district to support special education students first were helpful, and that the combining of special education and general education funds did not provide them with greater flexibility in school resource decisions. The survey results indicated that the vast majority of administrators who responded preferred keeping general education funds separate from

In addition to reviewing the budget appeal documents, the Inquiry Team heard testimony from parents Christine Palmieri and Juan Vaglienty at the Public Hearing. In each case, their children were found to require the services of a paraprofessional and, in each case, the parent reported that the budget appeal process delayed the hiring of the paraprofessional to serve the child.

The Inquiry Team finds that, based on the number of denied appeals that identify missed special education services and minutes and the lack of clear follow-up and remediation by CPS, it is more likely than not that the CPS budgeting and appeal system in both SY 16-17 and SY 17-18 led to the denial or delay of special education teaching and paraprofessional supports for some special education students.⁸¹ The Inquiry Team notes that CPS acknowledged at the Public Hearing that a more streamlined process is necessary for the appeals process moving forward, and that the district has determined that it will not require individual schools to budget for special education positions in SY 18-19. Instead, CPS will return to the practice of staffing those positions through the central office budget and assigning personnel to schools. This may alleviate the issue somewhat, but if CPS does not have clearer understanding of the needs of special education teachers and paraprofessionals at each school -- and a commitment to meet those demands -- schools may find themselves lacking personnel, instead of lacking the funds to hire personnel. But if the result is the same -- absence of necessary staff -- the problem remains.

Another concern raised by the Advocates, and in the original WBEZ report that led to the Advocates' complaint, was that SBB impacted other services as well. As noted above, related service providers were not included in the SBB process, thus shortages in these areas would not be caused by student-based budgeting in the schools. However, included in one of the affidavits submitted by the Advocates was a set of documents titled Health Services Management Program (HSMP) reports. These reports show the number of minutes of service provided by each category of related service provider within CPS for each of the last three years, and also show, in a category titled "explanation no service minutes," the number of minutes of service that students did not receive. This category apparently includes a wide variety of reasons -- student absence, provider absence, student "no show," provider conducting assessment, etc. The reports seem to document a large number of missed service minutes. However, the Inquiry Team was not given reports that break the information into separate categories and, therefore, cannot determine the number of service minutes which students lost because of inadequate staffing.

When asked about the report at the Public Hearing, Dr. Keenan stated that she did not know if related service provider minutes could be tracked via the HSMP. The ISBE Special Education Services Division believes that the minutes can be tracked for each discipline, and that both CPS and school staff have access to this report. Further, the ISBE Special Education Services Division is aware of numerous issues concerning CPS's HSMP reports, and is considering ways in which these issues can be resolved.

special education funds. As noted above, CPS intends to return to separate funding in SY 18-19 by returning to a position-allocation system for special education teachers and paraprofessionals.

⁸¹ The Inquiry Team requested information from CPS regarding whether there were sufficient paraprofessionals in these years to meet the minutes of all students, but did not receive that information.

2. Specific Concerns with the Use of State and Federal Funds

a. Budget Format

The Advocates expressed concerns about the lack of transparency with special education funding and the lack of delineation between special education and general education funding in the budget format CPS adopted for SY 16-17 and used again in SY 17-18. The Advocates assert that the new budget format prevents the appropriate tracking of special education spending. In reviewing this matter, the Inquiry Team spoke with ISBE staff responsible for reviewing school district budgets to determine whether the new CPS format complied with ISBE requirements. Staff confirmed that CPS's budget complies with the ISBE formatting reporting requirements. The Inquiry Team therefore finds that there is no basis to conclude that the budget format is improper.

b. Use of Title I and SGSA Funding

The Advocates also raised an issue as to whether CPS was improperly using specially designated state and federal funds to fund its special education services. Specifically, the Advocates questioned whether Title I and Supplemental General State Aid (SGSA) funds were being used for this purpose.

There are comprehensive federal reporting requirements for both IDEA and Title I funds.⁸² The Inquiry Team spoke with ISBE staff from Title Grants who confirmed that CPS is in compliance with Title I federal statutory reporting requirements.

The Inquiry Team also discussed CPS's budgeting and reporting efforts and compliance with SGSA reporting requirements with the ISBE Federal and State Monitoring Division. ISBE staff confirmed for the Team that CPS has complied with SGSA reporting requirements. The Inquiry Team therefore finds that CPS is meeting its obligations in these areas.

c. Maintenance of Effort (MOE)

The Advocates also questioned whether, because of its budget cuts, CPS was still meeting its Maintenance of Effort (MOE) requirements. ISBE staff has assured the Inquiry Team that CPS has not had an issue with MOE. MOE calculations are based on Annual Financial Reports submitted by districts to ISBE each year, and ISBE is satisfied, based on that review, that CPS is meeting its MOE obligations. The Inquiry Team therefore finds that CPS is meeting its obligations in this area.

3. Impact on Parents, Students, and Staff

As discussed above, the inclusion of special education staff in the Student-Based Budgeting system in SY 16-17 led to a large number of schools filing appeals seeking funds for additional special education staff. CPS officials testified that students were not deprived of services as a

⁸² In addition, Mr. Volan told the Inquiry Team during the meeting on budget issues that CPS monitors its schools in these areas and can make corrections to the school's expenditure allocations as needed to correct any mistaken allocations.

result of this shift, but the information contained in the appeals documents tells another story. Numerous Principals documented in their appeals that students in their schools were not receiving the minutes of service to which they were entitled because of a lack of funding to hire the necessary personnel. When questioned at the Public Hearing, Mr. Volan, Ms. Lucas, and Dr. Keenan could not adequately describe what follow-up was provided to schools identifying shortages, nor could any of them provide assurances that missed minutes had been made up. As noted earlier, a significant number of the appeals filed and denied involve paraprofessionals. Parents and staff members testified that paraprofessionals were not provided to students in a timely manner, and both parents who testified at the Public Hearing pointed to specific difficulties their children faced as a result of delays in securing paraprofessionals.⁸³

Several parents reported, in affidavits and at public comment sessions, that the budget process had the effect of pitting special education families against general education families in each school. Feelings of competition and resentment were reported when school communities learned of the tightening budgets and then were told that various programs and services were being cut while aides were being hired to support special education students. This was perhaps exacerbated by denials from the Budget Appeal Committee that instructed schools to eliminate school clerk or Assistant Principal positions to provide needed paraprofessionals or special education teachers. CPS did not intend to create this feeling of competition, but it was an unfortunate, and perhaps foreseeable, byproduct of the decision to consolidate the general and special education budgets without clear provision for ongoing staffing needs.

The Inquiry Team finds that the budget process in SY16-17 and SY 17-18 has raised concerns that are systemic in nature, because the Principal appeals, as well as the parent reports, document that numerous schools throughout CPS reported that they were without adequate staff to support the needs of their special education students. The Inquiry Team finds that students who were denied the services of paraprofessionals or special education teachers were, without doubt, negatively impacted by the budget process. This includes students who ultimately received the supports they needed, but who suffered unnecessary delays in getting the services called for in their IEPs. The Inquiry Team also finds that the budget process negatively impacted staff who were trying to provide services and support without adequate help.

ISSUE 4: Have CPS's policies regarding transportation resulted in an unlawful denial or delay in the provision of needed transportation services to students?⁸³

1. Transportation Issues Involving Preschool Students

The Advocates' complaint identified as an issue the denial or delay of transportation services being provided to preschool-aged children. The Inquiry Team understands there was a

⁸³ During public comment, parents and teachers shared concerns about shortages in paraprofessionals, with some families being told that they simply could not get paraprofessional support for their students because there were too many waiting families ahead of them in line. In addition, the Inquiry Team heard reports of assigned paraprofessionals being pulled away to attend to other assignments because of staffing shortages in other areas of the school and being unable to support the students to whom they were assigned fully. Parents raised concerns about staff shortages affecting services and delaying evaluations. In addition, there were some reports of denials for requested Assistive Technology devices due to a lack of funding or trained personnel trained to implement the device.

complaint initiated in May 2017 that resulted in a July 2017 Letter of Finding being issued by ISBE. Corrective action was ordered, which remains ongoing. In summary, the allegation in that case was that a preschool-aged child was found not eligible for special transportation services, despite the needs of her disability and location of educational program justifying the provision of the service. Additionally, the complaint alleged that transportation was not even discussed at the IEP team meeting where the denial was made. Ultimately, ISBE issued numerous corrective actions to CPS, some specific to the student, and others addressing special education preschool transportation issues generally.

In addition to the individual relief, ISBE's determination addressed training for all CPS personnel serving preschool-aged children on the district's procedures and guidelines for determining eligibility for special transportation services, revision of CPS's policies and procedures regarding transportation to and from locations other than home (e.g., day care settings), and training of all CPS personnel on these revisions.⁸⁴

This issue is not currently within the scope of the Inquiry because the ISBE Special Education Services Division is responsible for it and has already ordered systemic relief— and is working to ensure CPS's compliance. The Inquiry Team notified both parties that this sub-issue was no longer part of the Inquiry on March 13, 2018, at the pre-hearing conference.

2. Transportation Issues Involving Students Above Preschool Age

The Advocates raised concerns about the changes in transportation policies and procedures that began in 2016. The changes involved issues with the SSM system, authorizations needed from DRs, and the need for additional data in order to include transportation and/or transportation supports on a student's IEP. The Inquiry Team sought to understand further how CPS's transportation criteria are being applied, whether the SSM system is exacerbating this issue, and why certain transportation decisions require the involvement of a DR.⁸⁵

Prior to SY 16-17, CPS did not include a requirement for DR involvement in transportation decisions in the CPS Procedural Manual.⁸⁶ The affidavits of a number of parents and CPS school staff indicate that after the September 2016 Manual went into effect, DRs became a necessary part of transportation discussions for special education children. Prior to SY 16-17, the CPS Manual contained a general statement that specialized transportation would only be provided "... when the child's disability impairs the ability to get to school using standard transportation procedures."⁸⁷

⁸⁴ ISBE 285-87.

⁸⁵ During public comment and in affidavits submitted by individual parents, parents reported that, in SY 16-17, teams were unable to finalize IEPs unless the DR was present or had previously signed off on transportation, even if their student has been receiving transportation previously. Others reported changes were made, sometimes abruptly, to the provision of transportation services at the start of SY 16-17. In some cases, parents received notice via email that transportation services had been removed from their student's IEPs without notice and without the convening of an IEP meeting. More than one parent reported that after losing transportation for a child, the family was ultimately forced to change schools because they could not continue to transport the child on their own. Parents reported that these changes made transportation far more challenging and the process more difficult to navigate.

⁸⁶ CPS 267-68.

⁸⁷ CPS 267.

The Manual then gave four non-exclusive examples of situations that could meet that standard.⁸⁸ The September 2016 Manual expanded the prior two-page description to a five-page description, which was supplemented later by a multi-page guidance. The Manual and guidance required the DR to be present for all decisions regarding safe travel to school other than whether a nurse would be on a bus and the necessity for air conditioning.⁸⁹ The trainings indicated that DRs needed to be present at all meetings where transportation was considered.⁹⁰ Several affidavits made a similar statement.⁹¹ However, in meetings with the Inquiry Team prior to the Public Hearing, CPS officials indicated that DRs were not necessary for an IEP team to consider or approve transportation to a school of choice. The Inquiry Team worked to clarify the issue because of the inconsistencies in information about the DR role in schools of choice.

The current Procedural Manual makes clear and CPS officials confirmed that DRs have been and continue to be directly involved in transportation decisions for charter, contract, and options schools. During meetings with CPS and during the Public Hearing, the Inquiry Team sought to clarify the meaning of these terms, especially “options” schools. The question was whether the term “options” schools in the Procedural Manual meant schools such as magnet schools (once part of a program that may be referred to as “Options for Excellence”) or whether the “options” reference meant alternative high schools. Dr. Keenan was less sure about the meaning of the term, but Ms. Gibbons made clear that “options” schools in the Manual were the alternative schools that some students use to complete high school, while magnet schools (an “option” for some parents) were called “schools of choice.” Ms. Gibbons and Dr. Keenan both indicated that DRs were not part of the transportation process for students attending magnet schools or neighborhood schools. In meetings with CPS regarding the SSM system, Ms. Gibbons and Dr. Keenan each said that DRs did not need to approve transportation to neighborhood schools or schools of choice/magnet, nor did they need to confirm that sufficient data was uploaded to the system to have a discussion of the transportation issue schools.

The language of the February 2018 Manual and the preceding Manuals, as well as the February 2018 transportation guidance, however, say otherwise. All of these documents state that the authorization and involvement of a DR is necessary when a student is seeking transportation to a neighborhood school or school of choice because either she/he is a threat to herself or others, or when she/he is unable to navigate travel to school safely (reasons 3 and 4 in the Guidelines). Ms. Gibbons testified at the Public Hearing that the reference that remains in the Manual requiring the involvement of the DR was an error and should be fixed. It was unclear how this error affects the SSM system, if at all. However, since IEP teams are expected to follow the requirements of the Manual, it is likely that this error is being used as policy guidance in at least some portions of the district.⁹² The Inquiry Team finds that the inclusion of the DR in the Procedural Manual and Guidelines is inconsistent with the articulated CPS policy regarding schools of choice and that the Manual and Guidelines on these points are in error, although at least some schools appear to be following the erroneous procedures. The Inquiry Team also finds that, as of March 2018, CPS intends to correct this error.

⁸⁸ *Id.*

⁸⁹ CPS 394-95.

⁹⁰ Advocates 3265.

⁹¹ Advocates 175; Advocates 235; and Advocates 3894.

⁹² Advocates 3894.

3. Impact on Parents, Students and Staff

Transportation data submitted by CPS shows a significant decrease in the number of students qualifying for special education transportation services from SY15-16 to SY 17-18. In reviewing this data, as well as the testimony and documents submitted by both the Advocates and CPS, the Inquiry Team finds that the changes in policy and the requirement of DR involvement have contributed to this decrease.⁹³ Those changes were made in SY 16-17 and IEP teams have been determining with greater frequency that students no longer met the threshold for transportation services per the district's policies and procedures. Accordingly, they removed previously provided transportation services from students' IEPs. The Inquiry Team finds that in some cases this occurred outside of an IEP meeting and without securing a parent's consent to amend the IEP without a meeting.⁹⁴

As noted earlier, issues with transportation have remained in the current year. A lack of consistency and clarity exists regarding the role of the DR in FAPE-based transportation, especially when the articulated reason for that transportation has to do with a child's need for transportation because of an inability to travel safely. For example, during a due process hearing, one DR stated that her presence is required for all transportation decisions.⁹⁵ In another situation, a case manager reported that the DR must approve all transportation.⁹⁶ Additionally, a recent CPS training says that a DR must be present for all transportation decisions.⁹⁷ This confusion has also led to circumstances where an IEP team agrees that child meets these criteria but is unable to confirm transportation in the SSM system.⁹⁸ All of these situations are inconsistent with the transportation policy articulated by Ms. Gibbons and Dr. Keenan. This confusion makes it difficult for staff, not to mention parents, to understand the policy and to participate meaningfully in discussions regarding transportation at IEP meetings.

Furthermore, even in areas where the documents and the testimony of these witnesses agree, such as with DR involvement with transportation decisions concerning charter schools, the requirement of DR involvement has the same potential for delaying or denying services that the Inquiry Team identified earlier in this report.⁹⁹

In addition to the issues discussed above, parents and CPS staff members have identified another area of concern involving the implementation of transportation for students involved in cluster programs. When a student in a cluster program moves to a less restrictive classroom, the student may lose transportation services without the IEP team being able to consider the general criteria for FAPE-based transportation. One staff member reported that she was unable to move students out of cluster into less restrictive classrooms even for part of the day without jeopardizing

⁹³ CPS 1409.

⁹⁴ In Ms. Margaret Wakelin's affidavit, she discusses a student for whom the decision to remove transportation services had been made outside of the IEP team meeting, despite the explicit disagreement of the parents during the meeting. Advocates 174, 186, 189.

⁹⁵ Advocates 236.

⁹⁶ Advocates 3894.

⁹⁷ Advocates 3265.

⁹⁸ Advocates 3993-95; Advocates 4055-57; Advocates 4627-28; and Advocates 4653-55.

⁹⁹ See Issue 2, Section 1. For an example of this situation, see Advocates 310.

their transportation eligibility.¹⁰⁰ This happened even though she believed they were unable to transport themselves to school safely, a criterion for FAPE-based transportation in the Procedural Manual. The staff member reported that there appeared to be no way to access transportation effectively in these cases, even though CPS's stated policies should have allowed transportation to continue. The options for students in these situations were either to return to their home schools, even when the IEP team believed it was better for them to stay in the cluster school with its familiar environment, supports, and staff, or to give up the opportunity for the less restrictive environment and remain in the cluster. This appears to be another example of how the confusion surrounding CPS's current transportation policy has impacted students.

V. SUMMARY OF KEY FACTUAL FINDINGS

The Inquiry Team has attempted throughout this report to describe the relevant practices at CPS and how those practices may have impacted the students, parents, and staff. The following section is intended as a summary of the key factual findings contained in the report.

General Findings:

1. Both Parties agree, and the Inquiry Team finds, that IEP team decisions should be data-driven.
2. The SSM system has several positive attributes: It guides IEP teams through the IEP development process, allows for the creation of an electronic database system, produces consistent documentation, and can alert teams to missing or incomplete sections of the IEP.
3. CPS provided some training on the changes in the SSM and Procedural Manuals since 2016, but it has not provided coordinated and comprehensive training for IEP case managers. Nor has CPS provided comprehensive and coordinated training in these areas to other regular IEP team members, such as special education teachers and related service providers. CPS did not keep records of which staff actually received training, and it has conducted no training on the Manual for case managers and other frontline staff since the publication of the February 2018 version of the Manual.
4. The Procedural Manual and the SSM system are not always consistent with each other, further contributing to staff confusion over proper procedures and requirements.
5. CPS did not inform parents adequately about the changes to the procedures and data collection requirements. The 2016 Procedural Manual was posted on the external CPS website for only one day, making it virtually impossible for parents to access it and therefore to learn about the changes and new data and documentation requirements that CPS had implemented in areas such as ESY, paraprofessional support, specific learning disability eligibility, therapeutic day school placement and transportation. The July 2017 manual and the February 2018 manual were posted on the external website, but parents were not informed of the posting or offered any explanation or training on the changes contained in the manual.
6. CPS is planning to institute a Parent Advisory Group in April, 2018, and it intends to use that group in some way to help inform parents of the manual, and the information it contains. This is a positive step.

¹⁰⁰ Testimony of Sally Tabatsalis.

7. CPS is considering changes to address some of the issues outlined in this report. Because these changes have not yet been implemented, and because CPS is still in the process of developing and seeking input on the changes, the Inquiry Team cannot determine whether or to what extent those changes would ameliorate the issues identified in this report.

Issue 1:

8. Since SY 2016-17 and continuing to the present, the SSM system has been configured in a way that has prevented IEP teams, at times, from properly noting their consensus decisions on the IEP. This has created a systemic problem with regard to IEP development in these situations.
9. With regard to ESY, the SSM system has for the past two years not allowed teams to make decisions throughout the year. IEP teams are prevented from finalizing ESY services in the IEP, even if the IEP team agrees during these periods that services are required. During these times, the SSM system auto-populates language into the IEP stating that the student is not eligible for ESY services but that the team could reconvene to consider the issue. This language cannot be changed by the IEP team. In this way, the SSM system inserts language into an IEP that could misstate the decision of the IEP team.
10. The SSM system will not allow a team to decide ESY for regression/recoupment without the input of a specific number of weeks of data, regardless of the determination of the IEP team as to need. There is currently no ability to override the system if a week of data is missing, even if for a legitimate reason.
11. In some cases, such as when a student has successfully completed ESY and therefore has not suffered a significant regression/recoupment problem, the system does not appear to be designed to facilitate continued ESY eligibility, in spite of its proven success.
12. The SSM system will auto-populate language into the IEP indicating that a student is not eligible for paraprofessional support unless the appropriate administrator (generally, the Principal) has authorized the system to allow consideration of that support. This language cannot be changed by the IEP team. In this way, the SSM system inserts language into an IEP that could misstate the decision of the IEP team.
13. The requirement that a DR authorize students in certain eligibility categories to take the state's alternate assessment (the DLM) does not appear to have a systemic negative impact. The DLM, by law, is limited to a narrow group of students and CPS is entitled to institute a consistent procedure to determine compliance with those legal requirements.
14. The SSM system also limits the ability of IEP teams to place students in therapeutic school placements. The DR must enter an authorization into the system (either prior to or while at the IEP meeting) to allow this placement to appear as an option on the IEP. In the absence of this authorization, the SSM system will not allow therapeutic school to be selected as the student's placement, regardless of the determination of the IEP team.

15. The SSM system will not allow the IEP team to find a student eligible for services under the category of Specific Learning Disability unless the IEP team has entered 10 weeks (two non-consecutive five-week periods) of MTSS data into the SSM system.
16. The SSM system will not allow the IEP team to find the student eligible based on consideration of any other form of data without the required MTSS data being entered. Again, this limitation could misstate the determination of the IEP team.
17. CPS has indicated that in areas where the SSM system will not allow an IEP team to enter a particular decision, the team may note that in the IEP notes or simply not finalize the IEP until the issue is resolved. In either of these cases, however, the IEP is not reflective of the IEP team's decisions, and thus these options do not adequately resolve the concern with potentially inaccurate IEP language.
18. The Inquiry Team finds that the problems identified above with the SSM system and the Procedural Manuals have created a systemic concern.

Issue 2:

19. Beginning in SY 16-17, CPS imposed a number of data collection and data approval processes that have created a system in which the DR and/or the Principal could, through use of the review process, prevent timely and full consideration by the IEP team in a number of areas.
20. The Principal and/or DR makes a qualitative review of the data provided by IEP teams in areas including paraprofessional support, ESY services, and therapeutic school placement. The reviewer is, at a minimum, assessing whether the data supports the IEP team considering a decision in these areas. The Inquiry Team finds that the reviewer has the power, simply by instructing an IEP team that more data is needed, to delay consideration of these decisions.
21. In cases involving these decisions, CPS officials have testified that the Principal or the DR must be present to act as the LEA representative or must have affirmatively delegated that authority to the case manager after reviewing the data regarding the decision. In this capacity, CPS has granted the Principal or DR the authority to determine unilaterally whether a proposed support (such as a paraprofessional) or placement (specifically, therapeutic school placement) constitutes service in the least restrictive environment. If she/he determines that it does not, even if the rest of the IEP team disagrees, the decision of the Principal or DR prevails.
22. The nature of these approval/verification procedures are confusing, especially to parents. The question whether the administrator is approving the decision, assessing the sufficiency of the data, verifying only that the data exists, or performing some combination of these is not clearly answered by the Manuals, and staff. Even CPS district officials have had difficulty articulating the requirements when asked.
23. This confusion has led to conflicting approaches being taken by DRs and administrators when addressing these issues with IEP teams.
24. The Inquiry Team finds that the DR review process is unclear and may lead IEP team members to conclude that the DR or administrator has the authority to deny services or supports by withholding authorization for a team to consider a decision. This is true in each of the areas discussed in Issues 2 and 4: ESY, paraprofessional support, therapeutic day school placement, and transportation.

25. Beginning in the fall of 2016, parents were not advised that the data collection and approval/review requirements for areas such as paraprofessionals, ESY, and transportation had changed significantly. CPS did not take any meaningful steps to inform them of the changes. Thus, parents would not have known to ask that data collection be undertaken before requesting these services or supports.
26. In the area of paraprofessional support, the document collection occurs on the paraprofessional justification form, which is not part of the IEP and therefore is not routinely provided to the parents.
27. Beginning in SY 16-17, in order find a student eligible for ESY services in the regression/recoupment area, the IEP team was required to collect progress-monitoring data once a week, starting the first week of school, and to continue the weekly monitoring for up to 10 weeks. A team could not make the student eligible if data was missing for one or more weeks, even if the team determined that the student needed ESY services.
28. The IEP team could enter similar data from the period following winter and/or spring break if fall data was unavailable: however, CPS officials could not explain how that would suffice for a student who might not suffer serious regression following only a short break, but who would suffer regression following the lengthy summer vacation period.
29. The need to gather this data for a large number of students to determine who might need ESY added a significant amount of data collection work for staff members.
30. The requirement for 10 weeks of Behavior Intervention or MTSS data before an IEP team can consider therapeutic day placement makes it difficult for IEP teams to act in urgent circumstances, especially since the Procedural Manual does not notify staff and parents that the DR can grant an exception to the data collection requirements.
31. The data collection requirements have the effect of under-valuing sources of data that cannot be quantified into the system that CPS has created, such as information provided by parents, evaluations by outside providers and narratives from staff. Because of the way the system is formulated, such information cannot by itself trigger inclusion of services or supports such as paraprofessionals, therapeutic day school, or ESY, or eligibility for SLD.
32. These factors have the potential to limit parents' ability to advocate effectively for these services and to participate fully in the decisions regarding these services.
33. The Inquiry Team finds that the data collection and authorization/approval processes utilized in each of the areas described above has created a systemic concern.

Issue 3:

34. The Inquiry Team finds that, based on the number of denied appeals that identify missed special education services and minutes and the lack of clear follow-up and remediation by CPS, that it is more likely than not that the CPS budgeting and appeal system in both SY 16-17 and SY 17-18 led to the denial or delay of special education teaching and paraprofessional supports for some special education students.
35. The Inquiry Team finds that the CPS budgeting and appeals process in SY 16-17 and SY 17-18 has raised concerns that are systemic in nature because the Principal appeals, as well as the parent reports, document that numerous schools throughout CPS reported

that they were without adequate staff to support the special education needs of their diverse learners.

36. The Inquiry Team finds that the CPS budgeting and appeals process negatively impacted staff who were trying to provide services and support without adequate help.
37. The Inquiry Team finds that, because CPS submits its budget to ISBE in the correct format, there is no basis to conclude that the budget format is improper.
38. The Inquiry Team finds, based on ISBE staff determination, that CPS is meeting its obligations with regard to the reporting and usage of Title 1 and SGSA funds and its IDEA Maintenance of Effort obligations.

Issue 4:

39. The SSM system will auto-populate language into the IEP indicating that a student is not eligible for transportation in some circumstances unless the appropriate administrator (generally, the DR) has authorized the system to allow consideration of that support. This language cannot be changed by the IEP team. In this way, the SSM system inserts language into an IEP that could misstate the decision of the IEP team.
40. The Inquiry Team finds that the Procedural Manual and Guideline requirement that the DR “must act” as the District Representative when transportation to a Neighborhood School or School of Choice (also referred to as a magnet school) is being considered for non-medical reasons (Guideline 1A and 1B) is inconsistent with the articulated CPS policy regarding schools of choice. The Inquiry Team also finds that, as of March 2018, CPS intends to correct this error to indicate that the DR is not needed for this decision.
41. The Inquiry Team finds that the SSM requirement that a DR must sign-off or otherwise indicate agreement with an IEP team’s decision that transportation to a Neighborhood School or School of Choice (also referenced to as a magnet school) is based on non-medical reasons (Guideline 1A and 1B) inconsistent with the articulated CPS policy regarding schools of choice. The Inquiry Team also finds that, as of March 2018, CPS intends to correct this error in the SSM system.
42. The Inquiry Team finds that in some cases, removal of transportation from an IEP has occurred outside of an IEP meeting and without securing a parent’s consent to amend the IEP without a meeting.
43. The Inquiry Team finds that the concerns identified above are systemic in nature.

VI. CONCLUDING COMMENTS

Throughout this process, the Inquiry Team has been impressed by the degree of commitment and participation of all those involved. The Parties devoted significant amounts of time and effort to providing the Inquiry Team with information, insight, and data. The Inquiry Team benefitted tremendously from the parent support received in the Inquiry process in the form of individual meetings with parents at public comment opportunities, in addition to the 34 parent affidavits submitted for the Inquiry Team’s review. These submissions provide a level of detail and clarity that would have otherwise been missing from the Inquiry Team’s understanding. CPS staff members also provided personal stories and discussed the individual impact these policies and procedures have had on them and on the students they serve. The Inquiry Team commends

the comprehensiveness and diligence of their submissions and efforts. CPS officials spent many hours, not only gathering data, but also meeting with the Inquiry Team to allow the Team to develop an understanding of the procedures and policies CPS has enacted. All of these groups helped to inform the Inquiry Team's understanding and knowledge, and this report would not have been possible without the information that each of the participants brought to the table.

CPS has expressed its interest and intention to engage in collaborative efforts to improve its responsiveness to parents, students, and staff in the area of special education. At the Public Hearing, Dr. Keenan reported that she is planning to reinstitute the ODLSS Parent Advisory Council to assist with problem-solving and thought partnership around increasing parental engagement and understanding of special education policies and procedures. She testified that the group plans to begin meeting sometime in April. Dr. Keenan also testified at the Public Hearing that CPS is open to feedback from the Advocates and from Principals and CTU-represented staff. She indicated that she hopes to use this feedback to make further changes in the processes and policies discussed in this report, among others. As Dr. Keenan noted, some of the changes contained in the February 2018 Procedural Manual were the result of input from the Advocates in the summer and fall of 2017. To the extent that this Inquiry has encouraged CPS to continue and to formalize the process of collaboration, this will benefit all of the stakeholders in the Chicago Public School community.

In addition, the Inquiry Team notes that numerous divisions of ISBE meet with CPS district staff to provide guidance and support. For example:

- The ISBE Division Administrator of Funding and Disbursements has previously met with CPS on issues pertaining to special education claims and special education child counts.
- The ISBE Division Administrator for the Special Education Services Division holds a bimonthly meeting with ODLSS staff members to discuss various issues pertaining to special education in the district (e.g., discussing areas of noncompliance and the necessary corrective action, improvements to practice, data reporting timeliness and quality, etc.). Additionally, this division has also engaged in oversight through the corrective action measures it has undertaken when resolving complaints against CPS, such as the ongoing corrective action relating to preschool transportation concerns.
- ISBE's Data Strategy and Analytics Division meets periodically with CPS staff on various topics as well.

The involvement of ISBE; the participation of parent, staff, and advocate groups; and the commitment of CPS to continue to make changes to serve the needs of student all point to a better process and better outcomes for all of the students that CPS serves. At the Public Hearing, CPS rightly pointed to the great strides it has made in serving general education students and also emphasized its commitment to bringing those efforts to bear on behalf of its diverse learners as well. The Inquiry Team hopes that this process has helped to further those efforts by illuminating some of the areas that continue to require improvement.

The Inquiry Team wishes to recognize the contributions of the many ISBE staff, both in other divisions and within the legal department, who assisted in this process. Staff members from

a variety of divisions outside of the Legal Department shared information and expertise that shaped the Team's understanding and evaluation of the information received. In particular, the Team wishes to thank Heather Calomese, Mark Schudel, Tim Imler, Debbie Vespa, Jason Hall, Matt Uhlmer, Annie Brooks, Patrick Payne, and Pam Jurkoshek. Several individuals from the Legal Department dedicated their time and resources to public engagement efforts, document review, and to ensuring smooth operations of the Public Hearing as well. These individuals include Kristen Kennedy, Kim Grice, Georgiana Theoharis, Sania Merchant, Angela Brancato, Claudia Castro, Colette McCarty, and Kelly Weston.

Finally, the Inquiry Team wishes to thank the General Counsel and the Superintendent for inviting us to conduct this Public Inquiry. We appreciate their support and commitment to this process and we hope that this process has allowed the community to see that their concerns are being heard.