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ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

FEB 19 2014

SPECIAL EDUCATION  
SERVICES

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STUDENT<sup>1</sup>,

Student,

Case No: 2013-0470

v.

Beatriz A. Diaz-Pollack,  
Impartial Hearing Officer

  
School District.



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**FINAL DETERMINATION AND ORDER**

**JURISDICTION**

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

**BACKGROUND**

Petitioners are the parents (“Petitioners” or “Parents” or “Father” and “Mother”) of a seventeen-year-old student (“Student”) with a disability. On May 17, 2013, Petitioners, through their attorney,  filed a due process complaint (“Complaint”) against Respondent (“Respondent” or “School District” or “District”). The Illinois State Board of Education (“ISBE”) appointed the undersigned as hearing officer on May 22, 2013. The undersigned issued a Preliminary Order and statement of the parties’ rights on May 24, 2013. The School District, through its attorney, 

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<sup>1</sup> Personal identification information is provided in Appendix A.

██████ submitted its response on May 29, 2013. The parties waived the Resolution Meeting.

On August 9, 2013, the undersigned held a telephonic status conference during which parties agreed to set a telephonic prehearing in this matter for September 6, 2013 and hearing dates were agreed upon for October 22 through 26, 2013. Parties submitted a joint request of the 45-day decision timeline to accommodate these agreed upon dates. After a subsequent joint request for continuance, the undersigned conducted a telephonic prehearing conference on October 21, 2013. Both parties provided preliminary witness and document lists. Hearing dates were scheduled for December 3, 4, 5 and 6, 2013, with closing arguments scheduled for December 10, 2013 and the 45-day timeline extended to December 20, 2013.

The hearing commenced on December 3, 2013 and continued for second and third days of testimony on December 4 and December 5, 2013 at the School District administrative offices. On December 5, 2013, the undersigned hearing officer and the Parties were informed by School District officials that the District would be closing early due to inclement weather and no decision could be made on whether school would resume on December 6, 2013 until late that evening. As a result, the hearing was adjourned and a status date was set for December 10, 2013. The District was closed due to inclement weather both for the balance of December 5, 2013 and all day December 6, 2013.

On December 10, 2013 the undersigned convened the agreed upon telephonic status conference and Parties jointly agreed to reschedule the final hearing dates for this matter to January 27 and 28, 2014 at the School District administrative offices, with

closing arguments scheduled for January 31, 2014 and the 45-day timeline extended to February 10, 2014.

The hearing was closed to the public. The School District provided a court reporter for the proceeding. At the outset of the hearing, documents offered into evidence by either Party which were not objected to, or which were the subject of previously ruled upon objections resulting in admissibility, were admitted into evidence. Accordingly, Petitioners' proposed exhibits<sup>2</sup> A1-A44, B1-B18, C1-C177, D1-D104, E1-E109, F1-F87, G1-G12, H13-H21, I1-I12, I47-I55, I170-I247, I291-318, and I378-I387, and Respondent's proposed exhibits SD0001-SD0367, SD0371-SD0674 were admitted into evidence. During the course of the hearing, an objection was entertained as to Petitioner's proposed exhibits H2-H12 and sustained, thus the document was disallowed. At the outset of closing arguments, further argument was entertained as to pending objections to exhibits. As a result, Petitioner's proposed exhibits I13-I26, I56-I68, I69- I165, I166- I169, I268-I290 and I369 were admitted into evidence. Proposed exhibits submitted at the five-day disclosure deadline but not expressly enumerated above were not allowed into evidence and not considered in the preparation of this Final Determination and Order.

Petitioners called five witnesses: the Student's Mother; [REDACTED] Director of Education at [REDACTED] a private psychologist who conducted a psychological evaluation of the Student; [REDACTED] a speech and language pathologist at [REDACTED] and [REDACTED] Social Worker at [REDACTED]. The District called eight witnesses:

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<sup>2</sup> Parties' documents will be referred to herein according to the page number or tab number or letter with which they were submitted, as appropriate; e.g., Parents' hearing binder tab A will be referred to as P Tab A, and page 1 of tab A will be referred to as PD A1. Where documents admitted into evidence are duplicated by both parties, they will be referred to by the Parents' numbering only to avoid redundancy.

[REDACTED] special education teacher at [REDACTED] the Student's Mother; [REDACTED]  
[REDACTED], a private speech and language pathologist who conducted a speech and  
language evaluation of the Student; [REDACTED] Director of Special Education at the  
School District; [REDACTED], school counselor at [REDACTED]; [REDACTED], resource teacher at  
[REDACTED] [REDACTED], mathematics teacher and department chair at [REDACTED] and [REDACTED]  
[REDACTED], speech and language pathologist at [REDACTED]

After presentation of both parties' testimony, the hearing was continued for oral closing arguments to take place on January 31, 2014. Closing arguments were made orally via teleconference on January 31, 2014, thus concluding the hearing.

A transcript was provided for the hearing proceeding and is referenced herein. In rendering this decision, the undersigned has considered all documents entered into evidence, testimony by parties' witnesses, the parties' closing arguments and their suggested case law, as well as independent research. This decision is issued within ten days after hearing's conclusion, as required by Illinois law<sup>3</sup>.

#### **ISSUES AND REQUESTED REMEDIES**

The issues to be determined are as follows:

1. Whether the School District failed to identify all of the Student's disabilities or to provide appropriate evaluations to address identified or suspected disabilities;
2. Whether the School District denied the Student a free, appropriate, public education ("FAPE") by failing to provide an appropriate placement;
3. Whether the School District failed to write appropriate, individualized, measurable goals and objectives to address all of the Student's areas of need;
4. Whether the School District failed to provide social work services, speech and language services in an amount sufficient to meet the Student's needs;

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<sup>3</sup> 105 ILCS 5/14-8.02a(g55)(5)

5. Whether the School District failed to follow the recommendation of outside providers;
6. Whether the School District failed to write an appropriate transition plan;
7. Whether the School District failed to conduct an appropriate Functional Behavior Assessment ("FBA") or write an appropriate Behavior Intervention Plan ("BIP");
8. Whether the School District failed to consider him eligible for Extended School Year ("ESY") despite continued failure; and
9. Whether the School District violated the parents' right to meaningful participation in the IEP process and the requirement that all decision-making regarding the IEP be made at an IEP meeting by unilaterally adding, changing and deleting co-taught academic classes and services and accommodations allegedly provided in the co-taught classes by the special education teacher without notice to the parent or discussion of these services at any IEP meeting and thereby denied the parents' their right to meaningful participation in the IEP process and violated the requirement that all special education services be discussed at an IEP meeting and be included in the IEP.

The Parents request that the provide the following relief:

1. Prospective placement in the day program [REDACTED] at District expense, and retroactive reimbursement of tuition payments incurred by the parents since they placed [REDACTED] at [REDACTED] from the date of his placement and for the 2013-14 school year, including ESY for 2013 and 2014.
2. Prospective transportation to and from [REDACTED] and retroactive payment for expenses incurred by the parents in transporting [REDACTED] to and from [REDACTED] from the date of placement and for the 2013-2014 school year.
3. The requirement that the IEP be rewritten with participation from the [REDACTED] staff to include goals, objectives, and services as determined to be appropriate by that team, including measureable present levels of performance; appropriate and measurable goals and objectives; appropriate transition and behavior intervention plans; and appropriate special education and related services, including speech and counseling.
4. A plan for ESY service with input from [REDACTED] staff that supports the [REDACTED] Program and is relevant to [REDACTED]'s progress.
5. Payment for the private evaluations obtained by the parents because it was the sole information used by the District to determine services.

6. Two years of compensatory services at [REDACTED] resulting from the District's failure to provide FAPE for the past two years. Delay of [REDACTED]'s graduation to allow him to receive services at least for the next three years, if not until the day before his 22<sup>nd</sup> birthday, due to his considerable unmet needs, need for appropriate prospective remediation and transition services and provision of compensatory education to make up for missed services due to the denial of FAPE historically.

### **BURDEN OF PROOF**

In a special education administrative hearing, the party seeking relief has the burden of proof<sup>4</sup>. The Parents are seeking relief in this case and therefore have the burden of proof on all issues.

### **FINDINGS OF FACT**

After considering all the evidence, as well as the arguments of both counsel, the undersigned hearing officer's Findings of Fact are as follows:

1. The Student is a seventeen-year-old male<sup>5</sup>. He is described by Parents and educators as kind, pleasant, eager to please, very reserved – especially when discussing academics or school - and complex<sup>6</sup>.
2. Student has a complex learning disability in that he has more than one disability that impact interact to him in a variety of ways<sup>7</sup>.
3. Student's parents began having concerns about his ability to engage in his education as early as Kindergarten and into the early elementary grades, noting what they perceived as difficulties with sitting still, reading, writing, spelling and most aspects of school<sup>8</sup>.
4. In approximately 2004, the Student underwent an initial neuropsychological evaluation conducted by Dr. [REDACTED] who concluded the Student had Attention-Deficit/Hyperactivity Disorder<sup>9</sup>.

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<sup>4</sup> *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 44 IDELR 150 (2005)

<sup>5</sup> Due Process Request Dated May 17, 2013

<sup>6</sup> Testimony of Mother, Transcript Volume I, Page 42; Testimony of Terry Douglas, Tr. Vol. I, Pp. 300; Testimony of [REDACTED], Tr. Vol. V, Pg. 1071

<sup>7</sup> Testimony of [REDACTED], Tr. Vol. I, Pg. 299

<sup>8</sup> Testimony of Mother, Tr. Vol. I, Page 43

<sup>9</sup> Testimony of Mother, Tr. Vol. I, Pg. 44

5. In 2007, when the Student was in fifth grade, he underwent a second neuropsychological evaluation conducted by Dr. [REDACTED] (“Dr. [REDACTED] 2007 Report”) which was sought by Parents’ because of Student’s increasing resistance to attending school and completing school work at school and at home<sup>10</sup>. Dr. [REDACTED]’s 2007 Report concluded the Student had an ongoing diagnosis of Attention-Deficit/Hyperactivity Disorder, as well as Selective Mutism and Academic Problems<sup>11</sup>. In addition, the Report indicated the examiner had a strong feeling there may be an underlying anxiety disorder which would require additional evaluation to confirm and expressed questions regarding a potential expressive language and written expression disorder, as well we weakness with spelling<sup>12</sup>.
6. Dr. [REDACTED]’s 2007 Report indicated that the Student demonstrated average intelligence, as measured by the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV); however, Dr. [REDACTED] further indicated she did not believe this intelligence quotient (IQ) result to be fully indicative of the Student’s intellectual capabilities because of the wide variation in subtest scores<sup>13</sup>. Dr. [REDACTED]’s 2007 Report further indicated the Student demonstrated average academic functioning based on the Wechsler Individual Achievement Test-Second Edition (“WAIT-II”) subtests that were completed. The WAIT-II Reading Comprehension, Written Expression, and Oral Expression subtests could not be administered because of the Student’s withdrawal and work refusal during testing<sup>14</sup>.
7. Also by the time of the 2007 neuropsychological evaluation, the Student had been placed by Parents under the care of a psychiatrist and prescribed medications intended to address attention deficit disorder and anxiety<sup>15</sup>.
8. The Student continued to receive medication for attention deficit disorder, anxiety and depression throughout the time he attended [REDACTED] but, in Parent’s estimation, no combination of medications was arrived at that ameliorated all of Student’s symptoms simultaneously<sup>16</sup>.
9. Throughout the Student’s elementary school and junior high school education, Parents maintained contact with the elementary school district regarding the Student’s challenges and participated in the special education process<sup>17</sup>.

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<sup>10</sup> Testimony of Mother, Tr. Vol. I, Pg. 48; P Doc A1-13

<sup>11</sup> Id.

<sup>12</sup> P Doc A11-A12

<sup>13</sup> P Doc A1-13

<sup>14</sup> P Doc A11

<sup>15</sup> Testimony of Mother, Tr. Vol. I, Pg. 50; P Doc A1-13

<sup>16</sup> Testimony of Mother, Tr. Vol. I, Pg. 51

<sup>17</sup> Testimony of Mother, Tr. Vol. I, references throughout

10. On February 18, 2010, an IEP Team meeting was held by the Student's elementary school district to conduct the annual review of Student's IEP, and review existing data, reevaluate the Student, review/revise the Student's existing IEP, and to discuss transition, including discussion of Student's transition from the elementary school district he was attending to the School District, which is the local high school district<sup>18</sup>. In addition to the Parents and certain elementary school staff members, staff members from the School District participated in that IEP meeting, including [REDACTED] ( [REDACTED] Social Worker), [REDACTED] ( [REDACTED] Assistant Principal), [REDACTED] ( [REDACTED] Reading Specialist & SLP), and [REDACTED] ( [REDACTED] Guidance Counselor)<sup>19</sup>.
11. The February 18, 2010 IEP identifies the Student's disabilities as Other Health Impairment and Specific Learning Disability. The IEP covered portions of the 2009-2010 school year, when the Student attended eighth grade at his elementary school district, and the 2010-2011 school year, when the Student attended ninth grade at the School District. In summary, in addition to identifying accommodations and modifications for the Student, the IEP reflects the Student was to receive 1025 total special education service minutes for the balance of his eighth grade year and 255 total special education service minutes in a resource classroom beginning in ninth grade<sup>20</sup>.
12. On October 5, 2010, an IEP Team meeting was held by the School District to review/revise the Student's prior IEP and discuss transition. This was the first IEP team meeting held after the Student began attending high school in the 2010-2011 school year. The October 5, 2010 IEP identifies the Student's disabilities as Other Health Impairment and Specific Learning Disability. In summary, this IEP reflects the Student was to receive 275<sup>21</sup> total special education service minutes, as well as related services of Counseling, a classroom aide and the use of an assistive device, for the balance of his ninth grade year and through the start of his tenth grade year<sup>22</sup>.
13. On February 23, 2011, an IEP Team meeting was held by the School District to review the Student's prior IEP and discuss transition. The February 23, 2011 IEP identifies the Student's disabilities as Other Health Impairment (Acute Anxiety Disorder, Acute Depression and ADHD) and

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<sup>18</sup> Testimony of Mother, Tr. Vol. I, Pg. 61; P Doc C1-18

<sup>19</sup> P Doc C1-18

<sup>20</sup> *Id.*

<sup>21</sup> Although the document at C28 indicates Total Min. Receiving Sp Ed Services, this appears to be a typographical error in that the Resource minutes identified, and which should have been reflected in the minute total, are 275. This clarification was made in the Testimony of [REDACTED], Tr. Vol. IV, Ppg. 907-909

<sup>22</sup> P Doc C19-41

Specific Learning Disability (Written Expression). In summary, in addition to identifying accommodations and modifications for the Student, this IEP reflects the Student was to receive 275<sup>23</sup> total special education which were to be provided in a Resource classroom, as well as related services of Counseling, a classroom aide, the use of an assistive device, a behavior intervention plan and school health services<sup>24</sup>.

14. At the time of the February 23, 2011 IEP the Student was failing two core academic classes and receiving a D- in a third. It further identifies "Student's Present Level of Function Performance" as follows:

[Student] continues to deal with anxiety and depression issues. He is seeing the [REDACTED] social worked to better understand and deal with anxiety inside and outside school. We understand that [Student] has made significant gains in dealing with anxiety and depression. [Student] has multiple supports at [REDACTED] to help deal with academic and nonacademic issues<sup>25</sup>.

15. The February 23, 2011 IEP contained the following goals:
- i. [Student] will be able to complete assignments and classroom activities as they are assigned without passively refusing or ignoring requests from teachers;
  - ii. [Student] will compose a well-organized paragraph with 5 complete sentences;
  - iii. [Student] will utilize strategies to ignore distractions in the school environment;
  - iv. [Student] will continue earning credits toward graduation of high school; and
  - v. [Student] will demonstrate an awareness of necessary work habits, attitudes and skills for maintaining a job<sup>26</sup>.
16. The Fourth Quarter Report of Progress on Annual Goal reviewing Student's progress on IEP Annual Goals, as reviewed in May of 2011, indicates the Student was "Making Progress" on goals listed as i through iii and v, above, with progress being sufficient to meet the goals by the end of the year. No statement was made as to progress on the goal listed as iv above<sup>27</sup>.

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<sup>23</sup> See FN11, above

<sup>24</sup> Testimony of Mother, Tr. Vol. I, Pg. 72-74; P Doc C42-67

<sup>25</sup> P Doc C44

<sup>26</sup> P Doc C46-50

<sup>27</sup> P Doc D 27

17. The Student obtained five credits for his Freshman year at [REDACTED] with the following grades reported on his Official Transcript for each semester:

Course	Sem 1	Sem 2
Intro Indust	B	F
Resource	A	F
English 1	C	C
Int Alg/GM1	D	D
Health	B	
PE		B
Phy/Erth Sci	C	C

The Student's Freshman GPA was 1.9167<sup>28</sup>.

18. During his Sophomore year, the Student struggled to complete assignments and was often disengaged in the classroom setting. The Student reported struggling with anxiety and depression and feeling misunderstood by adults both at school and at home<sup>29</sup>. He further expressed a belief that he could not learn<sup>30</sup>.
19. The Student attended one period per day in the Resource classroom during the Sophomore year, during which time the purpose was to provide him assistance in completing outstanding work for his courses. The Resource classroom did not provide him with additional or remedial direct instruction. A main source of difficulty in Resource, as in the class itself, was completion of written assignments for English class. The Resource teacher would provide the student access to computers with Dragon Speak and Inspiration or scribe assignments for the Student, but he demonstrated extreme difficulty in generating and conveying ideas for his writing and in engaging in the writing process. It appeared, even while having difficulties with academics across all curricular areas, any assignment or project, across all courses, that called for writing was especially anxiety-provoking for the Student<sup>31</sup>.
20. During this time, and into the following school year, Parents and the Student perceived that despite the supports provided, when the Student reached a point where he could not move forward with an assignment that school staff believed he was making a choice not to work and that there should be punitive consequences for that choice<sup>32</sup>.

<sup>28</sup> P Doc 25 and 98 (duplicates); SD 0208

<sup>29</sup> Testimony of [REDACTED], Tr. Vol. V, Pg. 958-959

<sup>30</sup> Testimony of Mother, Tr. Vol. I, Ppg. 113-114

<sup>31</sup> Testimony of Mother, Tr. Vol. I, Ppg. 87-93; Testimony of Pam Barr, Tr. Vol. V

<sup>32</sup> Testimony of Mother, Tr. Vol. I, Ppg. 94-95

21. During his Freshman, Sophomore and Junior years, the Student was enrolled in a co-taught classes, also referred to as Tier 3 classes, at ██████████<sup>33</sup>. Co-taught courses at ██████████ are general education classes taught by a regular education teacher and a special education teacher as a team. Specifically in the case of English, the co-taught English curriculum is the same that is taught in other general education English classes at the school. Students participating in the course are, as with most other courses, a mix of general education and special education students that met or closely approximately 70% general education students and 30% students with disabilities<sup>34</sup>. The Student's Mother recollected hearing the term "co-taught class" in the context of on or more IEP discussions, and believed this to be a reference to courses taught by two teachers, but did not know one of those teachers would be certified in special education<sup>35</sup>.
22. During his Sophomore year, and increasingly during his Junior year, the Student demonstrated difficulties with completing written English assignments. During this time, he was given access to and training on computer-based programs such as Dragon Speak and Inspiration and given the option to work on a computer for written assignments, but he did not consistently utilize them. Assignments were broken down into small segments for him and teachers prompted him to complete assignments with varying degrees of success. He was, on occasion, able to complete and obtain higher than average scores on assignments. School District staff working with him were aware of his disabilities, his IEP, and the anxiety he demonstrated, especially around completion of written work<sup>36</sup>.
23. ██████████ credibly testified that having worked with the Student in his Sophomore and Junior co-taught English classrooms, she could discern a difference between times when he was having difficulty completing an assignment and not performing for that reason versus when he demonstrated behavior that indicated he did not want to work and was not making attempts at completing assignments<sup>37</sup>.
24. Parents maintained close communication with the school staff regarding concerns about Student's progress and lack of work completion, as well as his level of anxiety and school difficulties overall, during the Sophomore year<sup>38</sup>.

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<sup>33</sup> P Doc C15, C-44, C-60, C-109, C-140; Testimony of ██████████, Tr. Vol. II, Ppg. 583-585; [MCKEE? BARR?]

<sup>34</sup> Testimony of ██████████, Tr. Vol. II, Ppg. 583-585, Tr. Vol. III, Pg. 620

<sup>35</sup> Testimony of Mother, Tr. Vol. III, Ppg. 739-751

<sup>36</sup> Testimony of ██████████, Tr. Vol. II and Vol. III, Testimony of ██████████, Tr. Vol. --, Ppg.--

<sup>37</sup> Testimony of ██████████, Tr. Vol. III, Ppg. 707-709

<sup>38</sup> Testimony of Mother, Tr. Vol. I, Ppg. 102-103

25. The Second Quarter Report of Progress on Annual Goal reviewing Student's progress on IEP Annual Goals, indicates that during the first and second quarters of Sophomore year, the Student was "Making Progress" on all Annual Goals, sufficient to meet the goals by the end of the year<sup>39</sup>.
26. On February 14, 2012, an IEP Team meeting was held by the School District to review/revise the Student's prior IEP and discuss transition. The February 14, 2012 IEP continues to identify the Student's disabilities as Other Health Impairment (Acute Anxiety Disorder, Acute Depression and ADHD) and Specific Learning Disability (Written Expression). In summary, this IEP reflects the Student was to receive 550 total special education minutes in two Resource classroom periods, as well as related services of Counseling, a classroom aide, the use of an assistive device, a behavior intervention plan and school health services for the balance of his Sophomore and beginning of his Junior years<sup>40</sup>.
27. The February 14, 2012 IEP contained the following goals:
- i. [Student] will be able to complete assignments and classroom activities as they are assigned without passively refusing or ignoring requests from teachers;
  - ii. [Student] will use prewriting strategies and organizers to generate and organize ideas prior to beginning a composition in order to obtain a career as a video game designer; and
  - iii. [Student] utilized strategies to ignore distractions in the school environment o (sic.) that he may become a successful video game designer<sup>41</sup>.
28. It was the assessment of the IEP Team meeting convened February 14, 2012 that the Student was making progress on all of his prior annual goals at a pace sufficient to meet the goal by the end of the year<sup>42</sup>.
29. The February 14, 2012 IEP identifies "Student's Present Level of Function Performance" as follows:

Currently [Student] is failing five out of six classes at [REDACTED]. He has often expressed that outside factors are the main contributors to his apathy toward school. He does not seem to care about his failing grades and puts forth no effort to pass. He does not utilize his resource class and often refuses to complete assignments. [Student] is smart and could do well if he would try. He still struggles with anxiety when asked to complete

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<sup>39</sup> P Doc D 28

<sup>40</sup> Testimony of Mother, Tr. Vol. I, Pg. 73-74; P Doc C68-92

<sup>41</sup> P Doc C72-74

<sup>42</sup> P Doc C75

tasks involving writing expression. [Student] has multiple supports to help deal with his academic and nonacademic issues<sup>43</sup>.

30. On May 1, 2012, an IEP Team meeting was held by the School District to review/revise the Student's prior IEP and discuss transition. The May 1, 2012 IEP continues to identify the Student's disabilities as Other Health Impairment (Acute Anxiety Disorder, Acute Depression and ADHD) and Specific Learning Disability (Written Expression). In summary, this IEP reflects the Student was to receive 550 total special education in two periods in a Resource classroom setting Minutes, as well as related services of Counseling, a classroom aide, the use of an assistive device, a behavior intervention plan and school health services for the 2011-2012 school year. This IEP further reflects that the Student was to receive 275 total special education minutes in one period in the Resource classroom setting, as well as related services of Counseling, a classroom aide, the use of an assistive device, a behavior intervention plan and school health services for the 2012-2013 school year<sup>44</sup>.

31. The May 1, 2012 IEP identifies "Student's Present Level of Function Performance" as follows:

Currently [Student] is failing math at [REDACTED]. He has often expressed that outside factors are the main contributors to his apathy toward school. He does not seem to care about his failing grades and puts forth no effort to pass. He does not utilize his resource class and often refuses to complete assignments. [Student] is smart and could do well if he would try. He still struggles with anxiety when asked to complete tasks involving writing expression. [Student] has multiple supports to help deal with his academic and nonacademic issues<sup>45</sup>.

32. The May 1, 2012 IEP contained the following goals:

- i. Student will be able to complete assignments and classroom activities as they are assigned without passively refusing or ignoring requests from teachers;
- ii. Student will use prewriting strategies and organizers to generate and organize ideas prior to beginning a composition in order to obtain a career as a video game designer; and

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<sup>43</sup> P Doc C70

<sup>44</sup> P Doc C93-115

<sup>45</sup> P Doc C95

- iii. Student utilized strategies to ignore distractions in the school environment o (sic.) that he may become a successful video game designer<sup>46</sup>.
33. In or about May of 2012 there were discussions between School District staff and Parents regarding whether to place Student in SSP English, or a self-contained special education English course for the 2012-13 school year. No formal recommendation appears to have been made with regards to this potential placement change in the IEP process and Mother indicated that she was not interested in a placement change to SSP English, believing that this would result primarily in a class with less work and lowered expectations for the Student, which she was not interested in<sup>47</sup>.
34. In addition, a suggestion was made that Parents may want to visit [REDACTED] or [REDACTED] schools, local facilities that provide private special education placements for students. No formal recommendation appears to have been made with regards to this potential change in placement during the IEP process and Parents ultimately expressed they did not see the placements as appropriate and were not interested<sup>48</sup>.
35. Around this timeframe, Parents independently sought out and visited [REDACTED] as they were looking for ideas that may help the Student's school success for the following two years. Mother reports being told by school district staff that [REDACTED] was not an option. No discussion regarding [REDACTED] appears to have taken place at any formal IEP Team Meeting prior to Parent's subsequent decision to place Student at that school<sup>49</sup>.
36. The Fourth Quarter Report of Progress on Annual Goal reviewing Student's progress on IEP Annual Goals, for Student's Sophomore year indicates the Student was "Not Making Progress" on any Annual Goals during the later two quarters of Sophomore year, with progress being insufficient to meet the goals by the end of the year<sup>50</sup>.

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<sup>46</sup> P Doc C97-99

<sup>47</sup> Testimony of Mother, Tr. Vol. I, Ppg. 142-144; P Doc F 42

<sup>48</sup> Testimony of Mother, Tr. Vol. I, Ppg. 45-151; P Doc F 42

<sup>49</sup> Testimony of Mother, Tr. Vol. I, Ppg. 151-153; P Doc F 42

<sup>50</sup> P Doc D 29

37. The Student obtained 5.250 credits for his Sophomore year at [REDACTED] with the following grades reported on his Official Transcript for each semester:

Course	Sem 1	Sem 2
Prin/Tech 1	D	D
Mech. Draft.	B	F
Resource	B	D
Resource		D
English 2	D	D
Int Alg/GM2	D	D
Dr Ed	C	

The Student's GPA for the year was 1.3044 and his class rank was 236 out of 254<sup>51</sup>.

38. While the Official Transcript reflects grades of D in the core classes of English 2 and Integrated Algebra and Geometry 2, these grades were Fs at the end of the semester and Student was able to achieve Ds for his Official Transcript by participating in optional Credit Recovery courses in the summer. Credit Recovery courses are not special education classes, although they are designed to be highly individualized in order to allow [REDACTED] students to complete pending work necessary to convert a failing grade into a passing grade of D<sup>52</sup>.
39. In July 2012, due to growing concerns about the Student's reading and writing skills, Parents obtained an independent Speech/Language evaluation completed by [REDACTED] ("[REDACTED] Evaluation")<sup>53</sup>.
40. Summarizing findings that [REDACTED] believed to be an accurate representation of the Student's abilities as demonstrated on her examination, the [REDACTED] Evaluation concluded that the Student demonstrated "characteristics of a person who has a word retrieval problem, dyslexia and written expression weakness". Problems with word retrieval were seen in both Rapid Naming subtests of the Comprehensive Test of Phonological Processing (CTOPP) and in the Student's performance on the Gray Oral Reading Test-5 (GORT-5). While suspicions of dyslexia were founded based on the type of spelling errors and oral reading errors demonstrated in testing, including the subtests of the Woodcock-Johnson Tests of Achievement III (WJIII)<sup>54</sup>.

<sup>51</sup> P Doc 25 and 98 (duplicates); SD 0208

<sup>52</sup> Testimony of [REDACTED], Tr. Vol. IV, Ppg. 829-830; Testimony of [REDACTED], Tr. Vol. V, Pg. 966; Testimony of Mother, Tr. Vol. I, Ppg. 110-112

<sup>53</sup> Testimony of Mother, Tr. Vol. I, Ppg. 79-82; P Doc A14-23;

<sup>54</sup> Testimony of Miltenberger, Tr. Vol. IV, Pg. 769; P Doc A14-23

41. ██████████ noted that among the achievement testing administered in July of 2012, the Student had scored discrepantly high on the WJIII Writing Samples subtest which was a structured test where Student was expected to provide brief written responses, such as generating a middle or last sentence for an existing paragraph, scoring above-average with a normed score equivalent to the graduate school level<sup>55</sup>. By contrast, ██████████ also indicated that the Student did not produce any work for the subtest of writing a story based on a picture prompt. The Student was given the relevant instructions and sat quietly both through the time periods allotted for planning the story and time allotted for writing the story and did not write either on paper or when offered the opportunity to work on a computer<sup>56</sup>.
42. ██████████ believed the Student's written language deficits were related to weaknesses in executive functioning skills, meaning weakness in a set of mental processes that help a person connect past experience with present action, including activities such as planning, organizing, strategizing and paying attention to and remembering details<sup>57</sup>. Dr. ██████████ testified credibly that individuals with ADHD typically have a great deal of difficulty with tasks related to executive functioning and that she had observed behaviors in the Student's testing that evidenced such difficulties<sup>58</sup>.
43. ██████████ believed, based on the types of errors the Student made during testing, that he demonstrated characteristics of dyslexia. These included substituting one small word for another in reading and difficulty with the use of symbol imagery in spelling. The ██████████ Evaluation did not make a diagnosis of dyslexia<sup>59</sup>.
44. The ██████████ Evaluation made the following recommendations:
- i. [Student] could benefit from language therapy designed to improve his ability to retrieve known information more readily and efficiently and to read and spell at grade level. If both reading decoding and spelling will be targeted, his therapy could include instruction utilizing a multisensory approach such as Wilson Reading program [...];
  - ii. [Student] needs therapy and instruction to improve his written language skills. It seems in his IEP that he has been given strategies to manage his anxiety regarding writing, but this

<sup>55</sup> Testimony of ██████████, Tr. Vol. IV; P Doc A14-23

<sup>56</sup> Testimony of ██████████, Tr. Vol. IV; P Doc A14-23

<sup>57</sup> P Doc A20

<sup>58</sup> Testimony of ██████████, Tr. Vol. II, Pg. 450

<sup>59</sup> Testimony of ██████████, Tr. Vol. III, Pg. 788-790, 819

examiner believes that perhaps dyslexia and weak executive functioning skills are causing the written language problems which has resulted in [Student] feeling anxious and depressed about his inability to generate ideas, sequence thoughts coherently, and develop written paragraphs to express his ideas and thoughts. Instruction using the software program, Inspiration, could be very useful in helping [Student] being to “see his thoughts on a screen, arrange his thoughts, etc.;

- iii. [Student] appears to have weaknesses in Auditory Processing skill development. Based on a review of the raw data of an Auditory Processing Test by [REDACTED] Audiologist, [Student] could benefit from therapy to improve his auditory processing skills;
- iv. This examiner is in agreement with all accommodations listed on [Student's] current IEP. In addition, it may be beneficial for him to have access to recorded books. [...] <sup>60</sup>

45. In July of 2012, Parents also sought and obtained an Auditory Processing Evaluation conducted by audiologist [REDACTED] of [REDACTED] [REDACTED] (“[REDACTED] Evaluation”) <sup>61</sup>. The [REDACTED] Evaluation indicates four tests of Auditory Processing were administered and Student only demonstrated difficult on the measures of one out of the four tests, the SCAN-A. These results evidenced difficulties with auditory processing, but also might indicate the presence of “processing problems such as difficulty with visual information, problems specific to processing language, disorders of attention, and problems with memory <sup>62</sup>.”

46. The [REDACTED] evaluation made the following recommendations:

- i. Consider therapy that seeks to improve imaging visualization and verbalization abilities by enhancing imaging and apply them to everyday activities, such as note-taking in classes and when reading technical material. [...];
- ii. Try to keep study areas as quiet and free of distractions as possible. Soft wall hangings on hard walls, carpets on hard floors, doors and dividers to prevent unwanted sound and turning off televisions and radios are all ways to keep auditory distractions down;
- iii. Consider use of a wireless listening device in large classrooms [...];
- iv. Follow the recommendations of the Neuropsychological Evaluation that was administered previously and try to find a

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<sup>60</sup> P Doc A21

<sup>61</sup> P Doc A24-26

<sup>62</sup> P Doc A25

profession with expertise in training and accommodations for memory weakness;

- v. Meet with instructors and guidance professionals to develop realistic expectations for present and future academic pursuits<sup>63</sup>.

47. On September 5, 2012, an IEP Team meeting was held by the School District to discuss review of the Student's prior IEP, review of existing data, reevaluation and transition. The September 5, 2013 IEP continues to identify the Student's disabilities as Other Health Impairment (Acute Anxiety Disorder, Acute Depression and ADHD) and Specific Learning Disability (Written Expression). In summary, this IEP reflects the Student was to receive 275 total special education minutes in one period in the Resource classroom setting, as well as related services of Counseling, a classroom aide, the use of an assistive device, a behavior intervention plan and school health services and speech/language services for the 2012-2013 school year and the same totals for the start of the 2013-2014 school year<sup>64</sup>.

48. The September 5, 2012 IEP contains Documentation of Evaluations Results and Document of Intervention/Evaluation Results which refer the reader primarily to RtI data, which is not included, the Student's Temporary File, Explore date from 2011, the WISC-IV dating back to the 2007 [REDACTED] report, and the [REDACTED] and [REDACTED] Evaluations provided by the Parents<sup>65</sup>. The reevaluation further determines that the Student continues to be eligible under the categories of OHI given a diagnosis of ADHD and specific learning disability in the area of Written Expression<sup>66</sup>. The addition of speech/language services on the September 5, 2012 IEP was a result of the IEP Team's discussion of Parents' concerns regarding the Student's growing difficulties with his reading and writing skills and the Mother's perception that the Student had difficulties processing information<sup>67</sup>.

49. The September 5, 2012 IEP identifies "Student's Present Level of Function Performance" as follows:

[Student] seems to be happier this year. He likes his schedule and is utilizing his time well. His math teacher reported that [Student] works well in class but that he is failing to turn in some assignments. His history teacher reports similar behavior in his

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<sup>63</sup> P Doc A26

<sup>64</sup> P Doc C116-150

<sup>65</sup> P Doc C117-C120

<sup>66</sup> P Doc C121-123

<sup>67</sup> Testimony of Mother, Tr. Vol. I, Pg. 80-82

class. [Student] has multiple supports to help deal with his academic and nonacademic issues<sup>68</sup>.

50. The September 5, 2012 IEP indicates, according to September 2012 grades, that the Student was passing all of his classes at the time of the IEP Team meeting<sup>69</sup>.

51. The September 5, 2012 IEP contained the following goals:

- i. [Student] will be able to complete assignments and classroom activities as they are assigned without passively refusing or ignoring requests from teachers;
- ii. [Student] will continue to use prewriting strategies and organizers to generate ideas prior to beginning a composition in order to obtain a job as a blacksmith;
- iii. [Student] will continue to utilize strategies to ignore distractions in the school environment which will assist him with transition from school to work; and
- iv. [Student] will improve his auditory processing skills through skill practice and direct therapy<sup>70</sup>.

52. At or around the September 5, 2012 IEP meeting, School District staff suggested to Parents that a self-referral to the [REDACTED] [REDACTED] (" [REDACTED] ") for potential transition evaluation. However, after looking into it and surmising that there would be no appropriate services available for the Student through [REDACTED] Parents declined the suggested referral<sup>71</sup>.

53. The February 23, 2011, February 14, 2013, May 1, 2012, and September 5, 2012 IEPs contain the same List of Accommodations for the student which is as follows:

- i. Additional time/test, assignments 2x gen. ed. for deficit areas;
- ii. Assignments/tests read aloud as needed for anxiety;
- iii. Preferential seating near teacher and away from distractions;
- iv. Student dictates tests assignments for written expression delays;
- v. Use of computer/word processor for written expressions delays as needed; and
- vi. Behavior Intervention Plan across all domains.

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<sup>68</sup> P Doc C125

<sup>69</sup> *Id.*

<sup>70</sup> P Doc 127-130

<sup>71</sup> Testimony of Mother, Tr. Vol. I, Ppg. 157-160; P Doc F 49

With the exception that after the February 23, 2011, the Accommodation listed as v. above, became available 'an (sic.) all classes' rather than 'as needed'<sup>72</sup>.

54. The February 14, 2013, May 1, 2012, and September 5, 2012 IEPs contain identical Functional Behavior Assessment ("FBA") and Behavior Intervention Plans ("BIP")<sup>73</sup>. In formulating these FBAs and BIPs, District staff observed the student and consulted with teachers, and followed the format outlined by a computer program provided by [REDACTED] s IEP program, but no systematic data collection process or protocol was followed to record specific antecedents, behavior and consequences for the Student<sup>74</sup>. The FBA's explicitly address the Student's anxiety related to written assignments and his diagnosis and eligibility of anxiety and depression as contributing factors to the Student's difficulty with participation, focus and task completion, but do not explicitly reference ADHD<sup>75</sup>.
55. The February 14, 2013, May 1, 2012, and September 5, 2012 IEPs contain substantively identical Transition Plans<sup>76</sup>.
56. Despite the addition of an auditory processing skills goal and speech and language therapy minutes in the September 5, 2012 IEP, the Student received only two or three speech and language therapy sessions at [REDACTED] during his Junior year. He was placed on [REDACTED] s, [REDACTED] Speech Language Pathologist, caseload and remained there with scheduled therapy times until his withdrawal from [REDACTED] in Spring of 2013, but he was unwilling to participate in therapy sessions after the initial couple of sessions. He indicated he did not see the value in the sessions and found them childish because the sessions he did attend included independent work at a computer seemed like a game. [REDACTED] continued attempting to secure the Student's participating by asking him to come to therapy and checking in with him each week, but no steps were taken to reconvene the IEP Team to discuss the lack of participation and subsequent lack of delivery of speech language therapy minutes<sup>77</sup>.
57. Prior to the IEP Team's review of the [REDACTED] and [REDACTED] evaluations, the Student's High School IEPs did not contain speech and language therapy services and no recommendation had been made by school staff that the Student be evaluated by a speech and language

<sup>72</sup> P Doc C54, C79, C103, and C134

<sup>73</sup> Testimony of [REDACTED], Tr. Vol. V, Ppg. 1114-1121; P Doc C59-60; C84-86; C108-110; C139-141

<sup>74</sup> Testimony of [REDACTED], Tr. Vol. V, Ppg. 1089-1100

<sup>75</sup> Testimony of [REDACTED], Tr. Vol. V, Ppg. 1123-1126

<sup>76</sup> P Doc 82-83; P Doc 106-107; P Doc 137-138

<sup>77</sup> Testimony of Mother, Tr. Vol. I, Ppg. 78-79, 85-87; Testimony of [REDACTED], Tr. Vol. V, Ppg. 1024-1025, 1030, 1053; SD Tab 17

pathologist or an audiologist. After review and discussion of those evaluations, the IEP Team made the decision to add speech and language services<sup>78</sup>.

58. Subsequent to the September 5, 2012 IEP Team Meeting, Parents requested an IEP Team Meeting to further discuss the [REDACTED] and [REDACTED] reports and discuss changes to the Student's IEP<sup>79</sup>. An IEP Team Meeting was scheduled for October 23, 2012, but it was subsequently postponed at the request of the Parents who indicated to the School District that they were seeking additional independent evaluations and would like to postpone further IEP discussions until after results of any independent evaluation were available<sup>80</sup>.
59. Parents and School District staff maintained contact throughout the Student's Junior year regarding missing assignments and Student's failure to complete work across his courses, including English, Math and Art, leading to increasing concerns regarding grades and his ability to successfully complete classes. School staff asked Parents for ideas regarding how to motivate Student to complete work and inquired whether the independent neuropsychologist might have suggestions regarding strategies to use in helping the Student complete written work<sup>81</sup>.
60. The Second Quarter Report of Progress on Annual Goal reviewing Student's progress on IEP Annual Goals, indicates that in the first quarter of Junior year, the Student was "Not Making Progress on three out of four Annual IEP Goals, with progress being insufficient to meet those goals by the end of the year. It further indicates that in the second quarter of Junior year, the Student was "Not Making Progress" on two out of four Annual IEP goals, with progress being insufficient to meet the goal by the end of the year on three out of four goals<sup>82</sup>.
61. While the Student had demonstrated difficulty and required a lot of prompting in order to complete school and homework assignments throughout his high school career, especially assignments that involved writing, during the course of his Junior year, he was doing less and less assignments in school and as homework to the point where he stopped completing any homework<sup>83</sup>.

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<sup>78</sup> Testimony of [REDACTED] Tr. Vol. IV

<sup>79</sup> P Doc F50

<sup>80</sup> P Doc F65-66

<sup>81</sup> Testimony of Mother, Tr. Vol. I, Ppg. 169-170; Testimony of [REDACTED] Tr. Vol. V, Ppg.1076-1078; P Doc F68-76

<sup>82</sup> P Doc D 30

<sup>83</sup> Testimony of Mother, Tr. Vol. I, Pg. 128

62. Despite this ongoing decrease in performance and lack of success with the identified interventions, [REDACTED] staff did not request additional evaluations or collection of additional data to address the Student's needs<sup>84</sup>.
63. Between September and February of his Junior year, the Student was referred for disciplinary action for what was termed "Insubordination" or refusal to do work in class on at least seven occasions. On at least two occasions, disciplinary referrals that would have resulted in detentions were instead served as in school suspensions as a result of missing the originally assigned detention.<sup>85</sup>
64. In March of 2013, Parents sought and obtained an independent Psychological Report: Learning Disability/ADHD Assessment of the Student in response to what the Mother described as their concern that he was not accomplishing anything at school at that time. Dr. [REDACTED] conducted an evaluation consisting of interviews, clinical evaluations, cognitive ability and achievement testing, and review of prior evaluation and school-related materials, and a report was prepared dated March 6, 2013 ("Dr. [REDACTED] Report")<sup>86</sup>.
65. Dr. [REDACTED] found the Student to be very frustrated, feeling hopeless about school and expressing a belief that he could not learn in school and believed this might lead him to not "do the most he could for himself" due to this belief that he could not learn<sup>87</sup>. In addition, she found the variability in his performance across and between the academic areas she tested him to be unusual<sup>88</sup>.
66. The Dr. [REDACTED] Report concluded that the Student demonstrated a general intellectual ability in the average range, even while demonstrating a wide range of scores in individually tested areas with the lowest scores relating to memory, which was consistent with ADHD and word retrieval<sup>89</sup>. She concluded that even absent reassessment, the Student's history and present functioning supported an ongoing diagnosis of ADHD. She further concluded, based on discrepancies shown in academic testing, demonstrated significant differences in his actual and predicated performance on tasks related to writing and concluded that he has a Disorder of Written Expression<sup>90</sup>. Furthermore, the Dr. [REDACTED] Report indicates that the Student's "areas of intellectual weakness are those most valued in school [and] [h]is attention and memory problems

<sup>84</sup> Testimony of [REDACTED] Tr. Vol. V, Ppg. 952-953

<sup>85</sup> Testimony of Mother Tr. Vol. I, Ppg. 171-175; P Doc H14-15

<sup>86</sup> Testimony of [REDACTED] Tr. Vol. II, Ppg. 427-429; P Doc A27-41

<sup>87</sup> Testimony of [REDACTED] Tr. Vol. II, Pg. 437, 464

<sup>88</sup> Testimony of [REDACTED], Tr. Vol. II, Pg. 463-464

<sup>89</sup> P Doc A36

<sup>90</sup> P Doc A27-41

make traditional academic learning very difficult for him.<sup>91</sup>” And further indicated that his strengths would have application in the “adult world” and that his “current ambition to be a blacksmith is in line with the things he is good at, and does not depend on areas in which he struggles,” indicating also that “[m]any useful and profitable careers and trades depend primarily on visual spatial performance, but basic academic skills are also necessary for success<sup>92</sup>.”

67. Dr. [REDACTED]’s concluded that the Student was not benefitting from his current education placement and that the accommodations outlined in the IEPs she reviewed allowed him to avoid work rather than remediating his emotional needs<sup>93</sup>. Students with ADHD do not generally do well in a general education setting because it can be over-stimulating and distracting and the teacher to student ratio is too great<sup>94</sup>. The Dr. [REDACTED] Report included the following recommendations:

- i. [Student] seems to derive little, if any, educational benefit from his current classroom environment. Further, [Student’s] continued experience of frustration and helplessness has resulted in a continuing decline in his willingness to exert effort toward his academic work. For [Student] to progress educationally, it will be necessary for him to have instruction from teachers with special expertise in the problems of students with learning disabilities, and to work in a structured environment with fewer distractions because of his ADHD. Currently, [Student’s] education needs are not being met. The accommodations offered to him do not provide him the systematic, research-based (sic.), intensive intervention necessary for him to progress academically. As a result, his level of academic achievement is low, and he lacks some of the skills he will need as an adult. [Student] needs the type of instruction described above in an individualized environment where all of his instructors are prepared to respond appropriately to his specific problems with learning in a manner that responds to his emotion and social needs; and
- ii. Although [Student’s] current lack of motivation makes him want to “do nothing” (in his words), he would probably benefit from extracurricular involvement in activities which capitalize on his strengths in artistic and mechanical pursuits. Success in some area is crucial for [Student] to be able to build some self-esteem and confidence that he can achieve if he tries. However, while extracurricular pursuits may be helpful, the most

<sup>91</sup> P Doc 40

<sup>92</sup> P Doc A40

<sup>93</sup> Testimony of [REDACTED], Tr. Vol. II, Pg. 467

<sup>94</sup> Testimony of [REDACTED], Tr. Vol. II, Pg. 469

significant part of his life is school. Unless he is taught using methods which differ significantly from the standard instructional methods he is currently exposed to, and unless he is taught in an environment better suited to a student with ADHD, he is very unlikely to progress.

68. On July 2, 2013, Dr. [REDACTED] issued an addendum to her March 2013 Evaluation Report in response to receiving additional notes from Parents regarding Student's medical care from August 2007 through 2012. In sum, Dr. [REDACTED] indicates the additional information does not change her originally stated conclusions but rather, "underscore[s] the complexity of [Student's] problems"<sup>95</sup>.
69. In or about March of 2013, due to increasing concerns regarding the Student's academics and his emotional health, and taking into account ongoing communications from [REDACTED] staff regarding his progress and work completion, Parents made a decision to place him at [REDACTED] School<sup>96</sup>.
70. The Student obtained three credits for his Junior year at [REDACTED]. Grades were registered only for first semester due to the Student's withdrawal from [REDACTED] in Spring of 2013. The following grades were reported on his Official Transcript:

Course	Sem 1	Sem 2
Art I	78	
Art II		
Resource	78	
English 3	60	
IAG 3	67	
PE Team Sprrt	72	
PE Ad Ed 1		
AM History	63	

The Student's GPA for the year was 1.5 and his class rank was 224 out of 244<sup>97</sup>. These numeric grades represent three C and 3 D letter grades earned for the first semester<sup>98</sup>.

71. No recommendation was made during the Student's two-and-one-half years at [REDACTED] for him to participate in a special education extended school year program<sup>99</sup>.

<sup>95</sup> P Doc A42-44

<sup>96</sup> Testimony of Mother, Tr. Vol. I, Ppg. 188-193; P Doc F79, 83-85

<sup>97</sup> P Doc 25 and 98 (duplicates); SD 0208

<sup>98</sup> Testimony of [REDACTED], Tr. Vol. V, Pg. 956

<sup>99</sup> Testimony of [REDACTED], Tr. Vol. IV, Pg. 857

72. During his attendance at [REDACTED] the Student's post-secondary interests varied from mechanical engineering and blacksmithing to video-game design and blacksmithing and concentrating on blacksmithing after his Sophomore year. During this time, in addition to the goals identified in relation to Transition on each of his IEPs, he discussed Transition planning with the School Counselor and, together, they conducted preliminary research into the post-secondary programs available and educational requirements for pursuing his identified interests<sup>100</sup>.
73. Some staff members at [REDACTED] who worked with the Student formulated the impression that he was making a choice not to complete work in certain circumstances and that he might not need the level of support he was receiving in order to complete assignments. They cited his ability to do above-average work and assist other students in understanding classwork as indications that he was capable of doing more work than he was actually accomplishing in certain classes<sup>101</sup>.
74. Even in courses where he evidenced a high level of achievement on certain assignments or assessments, the Student would often struggle to complete homework assignments, do poorly on other assignments or assessments, or receive lower grades for work than he might have otherwise for failure to complete portions of that work<sup>102</sup>.
75. Parents sent a unilateral placement letter to School District on or about March 7, 2013<sup>103</sup>.
76. The Student enrolled at [REDACTED] School on or about April 1, 2013<sup>104</sup>.
77. [REDACTED] is an Illinois State Board of Education approved special education day and residential program serving students with complex learning disabilities and differences. [REDACTED] offers classes in all core curricular areas, as well as elective courses and extracurricular activities<sup>105</sup>.
78. Consistent with their existing practices, [REDACTED] staff conducted a team meeting relative to Student's strengths and needs in order to arrive at a plan for assisting the Student in moving forward. Student's Spring 2013 team review indicated to staff that writing assignments, and in particular

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<sup>100</sup> Testimony of [REDACTED], Tr. Vol. V, Ppg. 918-920, 937-943; P Docs C1-C177

<sup>101</sup> Testimony of [REDACTED], Tr. Vol. V, Ppg. 932-933; Testimony of [REDACTED], Tr. Vol. V, Ppg. 974-976

<sup>102</sup> Testimony of [REDACTED], Tr. Vol. V, Ppg. 978-982; Testimony of [REDACTED], Tr. Vol. V, Ppg. 926-927; P Doc F59

<sup>103</sup> P Doc G7

<sup>104</sup> Testimony of Mother, Tr. Vol. I, Pg. 188

<sup>105</sup> Testimony of [REDACTED], Tr. Vol. I, Ppg. 293-299; P Doc E1-26

freezing up or “being stuck” when confronted with writing assignments, were a significant issue for him and arrived at strategies to apply in assisting him with this challenge<sup>106</sup>.

79. The Student was initially very quiet and reserved while attending ██████████ but in the course of the Spring semester of 2013, he gradually engaged in extracurricular activities, developed relationships with some staff and peers, and was earning A and B grades in his coursework<sup>107</sup>. He received instruction in all core curricular areas and accommodations designed to address his identified disabilities, as well as the weakness with the executive functioning and word retrieval previously identified in the ██████████ Evaluation, and received speech and language therapy with the Lindamood Bell Seeing Starts program and the Lindamood Bell Visualizing and Verbalizing program, the latter of which is used across curriculum at ██████████<sup>108</sup>. Visualizing and Verbalizing consists of chunking larger sections of text and discussing various visual aspects of it in order to aid in retention of the material<sup>109</sup>.

80. At ██████████, the Student has an academic advisor who meets with him daily Tuesday through Friday and monitors his progress academically, socially and emotionally, including monitoring his organization – both mental and physical – to ensure he has materials he needs and has knowledge of what his required next steps are on any given day or assignment, ensures he has access to what he needs to complete assignments and serves as a communicator with Parents and other Brehm staff<sup>110</sup>. This includes assisting him in developing skills around the use of organizational strategies or programs to help his organization and planning, including physical materials such as planners and folders, and electronic resources, such as Google calendar<sup>111</sup>. His academic advisor serves as a bridge between him and his other teachers and provides strategies both to the Student and teachers to assist him in work completion<sup>112</sup>.

81. While the Student might maintain the same affect when he is disengaged because he cannot do work or when he is disengaged because he chooses not to do work, on closer examination, ██████████ staff has found subtle differences in his behavior that indicate he is thinking and trying, even if silent and staring, versus when he has shut down. In the former situation, he is given strategies, such as breaking work down into smaller tasks, asked to draw until he can gather his thoughts or verbally walked through

<sup>106</sup> Testimony of ██████████, Tr. Vol. I, Ppg. 301-303

<sup>107</sup> Testimony of Mother, Tr. Vol. I, Ppg. 194-198

<sup>108</sup> Testimony of ██████████, Tr. Vol. II, Ppg. 344-352

<sup>109</sup> Testimony of ██████████, Tr. Vol. II, Ppg. 353-354

<sup>110</sup> Testimony of ██████████, Tr. Vol. II, Ppg. 509-510

<sup>111</sup> Testimony of ██████████, Tr. Vol. II, Ppg. 511-512

<sup>112</sup> Testimony of ██████████, Tr. Vol. II, Ppg. 516-522

his thinking, while in the latter situations it is more effective to give him time to think and come back to the assignment or project. Repeated verbal reminders to work, or attempting to force him to produce work when he has disengaged, have not been effective in having him arrive at completed assignments<sup>113</sup>.

82. The Student demonstrates the ability to use higher level vocabulary, but at the same time has not demonstrated that he understands or can use lower level vocabulary, and at times may miss the details in what he is reading, while other times what he misses is the big picture, indicating he lacks fluidity in his reading<sup>114</sup>.
83. At [REDACTED] the Student is receiving 30 minutes of individual Speech Language Therapy weekly and participates in a 47 minute session social pragmatic group with three other male students to work on processing issues with language and executive functioning<sup>115</sup>.
84. The Student earned 1.75 credits during his the second semester of his Junior year at [REDACTED] The following grades were reported on his [REDACTED] Transcript:

Course	Sem 2
Literary Perspective	A-
Creative Wrtg/Resrch	B-
Integrated Math	A
US History	B
Art	A
Sculpture	A
Learning Cognition	B+ <sup>116</sup>

85. Parents' counsel sent a unilateral placement letter to the School District on August 16, 2013<sup>117</sup> for the 2013-2014 school year.
86. On September 4, 2013, an IEP Team meeting was held by the School District to discuss, review of existing data, the Student's prior IEP, transition, graduation, and annual review of the IEP. This IEP Team meeting was held after the Student began attending [REDACTED] and after the instant Due Process Hearing had been requested. The September 4, 2013 IEP continues to identify the Student's disabilities as Other Health Impairment and Specific Learning Disability. In summary, this IEP reflects the Student was to receive a 1495 total special education minutes

<sup>113</sup> Testimony of [REDACTED], Tr. Vol. II, Ppg. 525-533

<sup>114</sup> Testimony of [REDACTED], Tr. Vol. II, Pg. 536

<sup>115</sup> Testimony of [REDACTED], Tr. Vol. II, Ppg. 519-520, 544-545

<sup>116</sup> Testimony of [REDACTED], Tr. Vol. II, Ppg. 372-375; P Doc E40

<sup>117</sup> P Doc G8-10; [SD DOC?]

outside of the general education classroom for English/Language Arts, Social Studies, American History, and in a Resource classroom, as well as related services of counseling, an individual aide, use of an assistive device, a behavior intervention plan, a classroom aide and speech/language services<sup>118</sup>.

87. The September 4, 2013 IEP identifies Student's Present Levels of Functional Performance as follows:

When actively engaged and interested [Student] is able to participate and complete assigned tasks. In IAG 3 [Student] received a passing grade on all tests with the exception of one during 1<sup>st</sup> semester last year. [Student's] failure to turn in 27 homework assignments resulted in him receiving a D in the class. In American History [Student] passed 22 quizzes/test out of 30 (failing to complete 3). Of the 25 assignments completed in English 3 1<sup>st</sup> semester, [Student] received 15 A's, 2 B's, 4 C's, 2 D's, and 2 F's. [Student's] refusal to respond to prompting, utilize assistive technology made available to him and accept one on one assistance provided by special education and general education teachers negatively impacts his academic performance<sup>119</sup>.

88. The September 4, 2013 IEP contains the following goals:

- i. [Student] will complete 80% of his daily assignments in his core classes each quarter;
- ii. In his English 4 class, [Student] will establish and maintain a formal style and objective tone while attending to the norms and conventions of the discipline of writing. Progress will be measured quarterly through in class essays with a projected 50% gain on the English rubric;
- iii. Using a research based comprehensive program for auditory processing and direction instruction from the Speech Pathologist, [Student] will complete tasks that involve filtering out background noise, auditory sequencing, and auditory working memory;
- iv. [Student] will demonstrate work habits and attitudes important for successful employment as a Blacksmith;
- v. [Student] will research and explore specifics (salary, education, apprentice opportunities) about Blacksmithing and alternative post-secondary options;
- vi. [Student] will improve his executive functioning skills (specifically task initiation, working memory, attention, chunking larger tasks, and metacognition);

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<sup>118</sup> P Doc C151-177

<sup>119</sup> P Doc C153

- vii. [Student] will improve his ability to spell and decode a variety of multi-syllabic words. He will complete four (4) review tests with 90% accuracy demonstrating his spelling improvement on the "My Reading Coach" software program;
- viii. Given the Woodcock Johnson III, [Student] will demonstrate broad math skills at a 10<sup>th</sup> grade level; and
- ix. [Student] will work with his school counselor and the school social worker (LCSW) to identify appropriate ways to express his frustration within the classroom setting<sup>120</sup>.

89. The September 4, 2013 IEP indicates the following List of Accommodations:

- i. Additional time/test, assignments 2x gen. ed. for deficit areas;
- ii. Assignments/tests read aloud as needed to assist with attention and focus;
- iii. Preferential seating near teacher and away from distractions;
- iv. Student dictates tests assignments for written expression delays;
- v. Use of computer/word processor for written expressions delays as needed;
- vi. Behavior Intervention Plan across all domains
- vii. Use of assistive technology (Dragon Naturally Speaking, Inspiration) for written expression delays;
- viii. Audiotext for attention and focus;
- ix. Provide study guides and outlines for organizational deficits;
- x. Notes provided for organizational deficits; and
- xi. Assignments will be chunked into smaller chunks for organizational deficits<sup>121</sup>.

90. The September 4, 2013 IEP contains a Functional Behavior Assessment and Behavior Intervention Plan that has been significantly modified from those contained in the Student's prior [REDACTED] IEPs<sup>122</sup>.

91. The September 4, 2013 IEP Notification of Conference Recommendations indicates the Student is recommended for graduation<sup>123</sup>. In the case of special education students at CCHS, recommendations for graduation are made by the IEP Team based on a student's accumulated credits, in addition to review of other factors, such as a student's completion of IEP goals and objectives.

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<sup>120</sup> P Doc C155-163

<sup>121</sup> P Doc C167

<sup>122</sup> Testimony of [REDACTED] Tr. Vol. V, Ppg. 1127-1128; P Doc C173-175

<sup>123</sup> P Doc C170, C177; Testimony of [REDACTED] Tr. Vol. IV, Pg. 889-890

92. Prior to the start of the 2013-2014 academic year, [REDACTED] School developed and IEP for the Student's 12 grade year ("[REDACTED] IEP")<sup>124</sup>. The [REDACTED] IEP identifies the Student's disabilities as Other Health Impairment (Attention Deficit Hyperactivity Disorder) and a Disorder of Written Expression<sup>125</sup>.

93. The [REDACTED] IEP identifies Student's present Speech Language Abilities as:

[Student] has characteristics of a person who has word retrieval problems, dyslexia, and written language weaknesses. He has a weak ability to image or picture letters and words so he does not easily remember sight words or look a like (sic.) words for better spelling. It is believed that perhaps dyslexia and weak executive functioning skills are causing the written language problem resulting in [Student's] feeling anxious and depressed about his inability to generate ideas, sequence thoughts coherently, and develop written paragraphs to express his ideas and thoughts<sup>126</sup>.

94. The [REDACTED] IEP contains the following goals:

- i. [Student] will actively participate in social skills group once a week to improve how he expresses his feelings and manages his emotions;
- ii. [Student] will write a five paragraph essay at the 9<sup>th</sup> grade level and receive 90% accuracy at a performance level 5 using the Written Essay Product Guide and based on the mastery of the following objective on 3 consecutive trials;
- iii. [Student] will improve his ability to spell and decode a variety of multi-syllabic (sic.) words to 80% accuracy on the Wilson Assessment of Decoding and Encoding, and will increase his score on the WJIII by 2 grade levels using the Lindamood-Bell Seeing Starts program and Orton-Gillingham reading programs;
- iv. Given the WJIII [Student] will demonstrate broad math skills at a 10<sup>th</sup> grade level by demonstrating the mastery of the following benchmarks. These benchmarks will be assessed using weekly quizzes and a chapter test. To help with retention, monthly he will be given a curriculum based assessment- and will then be provided with more instruction on incorrect problem;
- v. [Student] will improve his executive functioning skills (specifically task initiation, attention, chunking larger tasks and

<sup>124</sup> Testimony of [REDACTED] Tr. Vol. --, Pg. ---; P Doc E42-59

<sup>125</sup> P Doc E42

<sup>126</sup> P Doc E44

metacognition) to a performance level of 5 based on the following objectives as measured through team notes;

- vi. Speech-Language Goals: Improve understanding and use of vocabulary and increase semantic knowledge;
- vii. Speech-Language Goals: [Student] will summarize selected sections of text including actions of major characters and their implications in both written and verbal form;
- viii. Speech-Language Goals: To improve conversation and friendship-related language skills<sup>127</sup>.

95. The [REDACTED] IEP indicates the following List of Accommodations:

- i. Instruction: Provide Outlines to help him consolidate and organize information;
- ii. Instruction: Modified Assignments to help him manage his anxiety;
- iii. Instruction: Additional time for assignments for slow retrieval and response time and anxiety;
- iv. Instruction: Reduced Assignments – same as above
- v. Instruction: Provide Study Guides to help him consolidate and organize information, as well as help with working memory;
- vi. Instruction: Assignments and tests read aloud as needed;
- vii. Instruction: Scribe for assignments due to deficits in writing ability;
- viii. Instruction: Notes provided/note taking assistance because it is too taking to remember, process and organize information;
- ix. Assistive Tech: Word Processor to facilitate writing with (sic.) use of Inspiration to organize thoughts, Kurzweil to read and proof read, and Dragon Speak to record thoughts;
- x. Assistive Tech: Calculator for his working memory;
- xi. Organizational: Planning Coach to help him organize, prioritize, chunk, and complete homework;
- xii. Organizational: Assignment Book to help with executive functioning deficits;
- xiii. Organizational: Tutorial Help to give immediate feedback and reduce anxiety;
- xiv. Organizational: Structured Study Hall
- xv. Organizational: Models;
- xvi. Organizational: Structured Daily Schedule;
- xvii. Organizational: One-on-One Testing for dyslexia and anxiety;
- xviii. Environmental: Preferential Seating to help with attention;
- xix. Environmental: Small Class Size to monitor attention, feedback, reinforcement;
- xx. Environmental: Minimize distractions for focusing;
- xxi. Testing: Extended time;

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<sup>127</sup> P Doc E47-54

- xxii. Testing: Ability to test over multiple days;
- xxiii. Testing: Read test to student;
- xxiv. Testing: Scribe provided or word processor with Dragon Speak<sup>128</sup>.

96. Student has continued enrollment at [REDACTED] as a Senior for the 2013-2014 school year. During the Fall semester at [REDACTED] he has continued to do work in school and complete homework at home, he is functioning well socially and participating in extracurricular activities and his anxiety level, as observed at home, has declined, in that he appears less uptight and more relaxed, even while continuing to be a generally reserved child<sup>129</sup>.
97. During the Fall semester at [REDACTED], Student has been doing well with a fairly high level of support, including guided practice during assignments, help with executive functioning tasks and help staying on task<sup>130</sup>. He is turning in assignments at a high rate and making progress in his academic classes<sup>131</sup>.
98. In the time since his placement at [REDACTED], the Student has demonstrated progress toward completion of his Speech and Language Goals, has developed skills in written expression – allowing him to rephrase questions in order to answer them even while still demonstrating difficulty in broader written tasks that require more complex skills such as inference or prediction -, he is slowly being given more complex homework assignments, he is learning strategies in spelling although he still demonstrates challenges in this are, he is learning to be more verbally and non-verbally expressive and to better understand his own reactions or behaviors in order to self-advocate when he is having difficulty<sup>132</sup>.
99. [REDACTED], [REDACTED] Director of Education, credibly testified that, based on her experience and Student's current level of academic and personal functioning, she did not foresee the Student would be ready to graduate and move on to post-secondary opportunities, including academic, vocational or dealing with life skills, and recommended at least an additional year to evaluate his progress<sup>133</sup>.

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<sup>128</sup> P Doc E45

<sup>129</sup> Testimony of Mother, Tr. Vol. I, Ppg. 198-202; [REDACTED]

<sup>130</sup> Testimony of [REDACTED] Tr. Vol. II, Ppg. 369-370; [REDACTED]

<sup>131</sup> Id.; P Doc E 80, E82-95

<sup>132</sup> Testimony of [REDACTED], Tr. Vol. II, Ppg.551-557

<sup>133</sup> Testimony of [REDACTED], Tr. Vol. II, Ppg. 375-377

## CONCLUSIONS OF LAW AND DISCUSSION OF ISSUES

Based upon the above Findings of Fact, the arguments and suggested legal authority provided by counsel, as well as this hearing officer's own legal research, the undersigned Hearing Officer's Conclusions of Law and Discussion of Issues follows. Addressed herein will be each of the Issues identified above as numbers one through nine; however, they are addressed as two overarching issues, within which are found the balance of the issues and allegations raised by Parents' request.

I. Whether the School District failed to identify all of the Student's disabilities or to provide appropriate evaluations to address identified or suspected disabilities

A District must conduct evaluations that ensure a child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities<sup>134</sup>. Evaluations must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified<sup>135</sup>. Reevaluations must be conducted when a District determines that the educational or related service needs of the child warrant reevaluation, and should be done not more than once a year and at least once every three years<sup>136</sup>.

In conducting a reevaluation, the IEP Team must determine whether any additions or modifications to special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child<sup>137</sup>. The District must

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<sup>134</sup> 34 CFR §300.304(c)(4)

<sup>135</sup> 34 CFR §300.304(c)(6)

<sup>136</sup> 34 CFR §303

<sup>137</sup> 34 CFR §300.305(a)(2)(iv)

conduct such assessments and evaluations as are necessary to produce data with which to answer the question, *inter alia*, of whether any additions or modifications to the IEP are necessary<sup>138</sup>. The IEP Team may determine that additional data is not necessary, and, in such circumstances, notify the parents of their right to seek an assessment to determine the child's educational needs<sup>139</sup>. The District is then not required to perform the additional assessments absent a request by the parent<sup>140</sup>.

Parents argue that the District failed to reevaluate the student and conduct further needed assessments and evaluations despite a continued awareness of the Student's academic failures under existing IEPs; failed to identify Student's suspected dyslexia, word retrieval, auditory processing and executive functioning issues; and failed to evaluate student to the extent necessary to address all of his identified areas of need or those suspected disabilities. The preponderance of the evidence suggests that the District was aware of the Student's lack of progress under existing IEPs and, in conducting a single reevaluation in 2012, did not compile sufficient data or fully utilize the available data to identify all of the Student's special education and related service needs. Furthermore, the only additional data or evaluations relied on were those independently obtained and provided by the Parents.

An earlier reevaluation of the Student was conducted in February of 2010 by the elementary school district the Student attended at the time and prior to the start of the statute of limitations period in this matter. While enrolled at ██████████ and during the pertinent statute of limitations period, a reevaluation of the Student was conducted in September of 2012, which was conducted based on a review of existing data with no

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<sup>138</sup> 34 CFR §300.306(c)

<sup>139</sup> 34 CFR §300.306(d)(1)((i-ii)

<sup>140</sup> 34 CFR §300.306(d)(2)

recommendation for additional evaluations or assessments to be completed. According to the September 5, 2012 IEP, the primary data relied upon in conducting the reevaluation was RtI data, with a reference to Explore scores from November of 2010 and the results of the Student's last WISC-IV assessment, conducted in 2007. This data, and the discussion of this data evidenced by the September 2012 IEP and witness testimony, led to a restatement of the Student's previously identified special education needs and related services and resulted in substantively similar educational goals, related services and accommodations for the Student.

The only significant changes or additions made by the September 2012 IEP Team were those made in response to the [REDACTED] and [REDACTED] evaluations obtained independently by the Parents. Even in reviewing these, the IEP Team added only an auditory processing goal derived from the [REDACTED] Evaluation which had been only identified as a weakness, and not addressing the detailed recommendations of the [REDACTED] Evaluation which recommended language therapy designed to improve word retrieval, reading decoding and spelling, or in any way addressing her recommendations with regards to suspected dyslexia and executive functioning deficits. This even when the latter potential deficits had been observed in the Student, as evidenced by the weak initiation, planning, and organization skills demonstrated in his schoolwork and are deficits commonly associated with the Student's primary diagnosis of ADHD.

The regulations indicate that a School District is not required to complete additional evaluations or assessments where a team deems them unnecessary unless a parent requests those assessments, and no evidence was presented to suggest that Parents

in this matter explicitly requested additional assessments or evaluations to be conducted. However, the evidence weighs in favor of the conclusion that the District had already erred before reaching the conclusion of whether or not additional data were necessary, in that it failed to recognize the need to reevaluate the Student earlier despite repeated academic failure seen together with his identified cognitive ability and failed to delve deeply enough into evaluations in order to determine what additional needs or services would have to be identified in order to provide the Student with an appropriate education.

II. Whether the School District denied the Student a FAPE by failing to provide an appropriate placement

The IDEA ensures that children with disabilities are provided with a free appropriate public education (“FAPE”) and related services that meet their unique needs and prepare them for further education, employment, and independent living<sup>141</sup>. Implicit in the congressional purpose of providing access to a FAPE is the requirement that the education provided be sufficient to confer some educational benefit to the disabled child<sup>142</sup>. A FAPE is defined as:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA... include an appropriate preschool, elementary school, or secondary school education in the State involved and are provided in conformity with the individualized education program (IEP)<sup>143</sup>.

In deciding whether a School District provided a student a FAPE, the inquiry is limited to (a) whether the School District complied with the procedural requirements set forth in IDEA; and (b) whether the student’s IEP is reasonably calculated to enable the

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<sup>141</sup> 20 USC §1400(d)(1)(A)

<sup>142</sup> *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 553 IDELR 656 (U.S. 1982)

<sup>143</sup> 20 USC §1401(9); 34 CFR §300.17

student to receive educational benefit<sup>144</sup>. To meet the substantive prong of *Rowley*, an IEP must respond to all significant facets of the student's disability, both academic and behavioral<sup>145</sup>. In order for a hearing officer to make a finding against a District regarding violations of procedural requirements, those violations must have impeded a student's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits<sup>146</sup>. In reviewing claims of violation of FAPE, it is not the role of a hearing officer to substitute her or his judgment for that of school administrators, but rather to make a decision, based on the record, as to whether procedural requirements of the IDEA were met and whether the District acted in a manner reasonably calculated to enable the child at issue to receive educational benefits<sup>147</sup>.

In order to prevail on a claim of reimbursement for a unilateral parent placement in a private school or facility, a Petitioner must have provided ten-day notice of the intent to privately place a student and be able to prove:

1. The school district's placement fails to provide student a FAPE, and
2. The parentally selected private program is found to be appropriate under IDEA<sup>148</sup>.

In the instant matter, Parents allege a number of procedural and substantive violations of FAPE leading to an argument that the unilateral parental placement effectuated for their child on or about April 1, 2013 was appropriate due to the District's

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<sup>144</sup> *Rowley*, 458 U.S. at 206-207

<sup>145</sup> *Alex R. v Forrestville Valley Comm. Unit Sch. Dist.* 221, 375 F.3d 603, 41 IDELR 146 (7<sup>th</sup> Cr. 2004), citing *CJN v. Minneapolis Pub. Schs.*, 323 F.3d 630 (8<sup>th</sup> Cir. 2003)

<sup>146</sup> 20 USC §1415(f)(E)(ii)(I-II)

<sup>147</sup> *Alex R.*, 375 F.3d 603, 41 IDELR 146

<sup>148</sup> *Burlington Sch. Comm. v. Massachusetts Dept. of Educ.*, 471 U.S. 359, 20 IDELR 532 (U.S. 1985)

failure to provide a FAPE and that prospective placement at the private facility at public expense, in addition to reimbursement back to the original date of placement, as well as additional requested remedies are appropriate. Those allegations, as well as the School District's corresponding arguments, are treated in turn below, leading to a discussion of the ultimate issue in the matter of whether FAPE was denied.

The term "educational placement" is not defined in IDEA, thus courts of competent jurisdiction have been left to determine the meaning of the term. The term encompasses more than the physical location where the Student's education and related services are provided and has been interpreted to incorporate enough flexibility to encompass the Student's experience<sup>149</sup>.

*A. Did the School District fail to write appropriate IEPs from May 17, 2011 through the filing of the Parent's Due Process request?*

An IEP is a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR §300.320 through 34 CFR §300.324<sup>150</sup>. As articulated by the Supreme Court in *Burlington*, the IEP is the "modus operandi" of the Act ... a brief comprehensive statement of the education needs of a handicapped child and the specially designed instruction and related services to be employed to meet to those needs<sup>151</sup>.

- i. Did the IEPs written by the School District on February 14, 2012, May 11, 2012 and September 5, 2012 fail to contain appropriate, individualized, measurable goals and objectives to address of the Student's areas of need?

An IEP is required to include a statement of the child's present level of academic achievement and functional performance, measurable annual goals that will meet the

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<sup>149</sup> *Bd. Of Educ. of Comm. High Sch. Dist. 218 v. Illinois State Bd. of Educ.*, 103 F.3d 545 (7<sup>th</sup> Cir. 1996)

<sup>150</sup> 34 CFR §300.22

<sup>151</sup> *Burlington*, 471 U.S. 359

child's needs, a description of how the child's progress toward meeting the annual goal will be measured, and a statement of the special education and related services that are to be provided to the child<sup>152</sup>. The IEP must also identify any program modifications that will be provided to allow the student to advance appropriately toward his annual goals, including making progress in the general education curriculum<sup>153</sup>.

Parents contend that the School District failed to provide appropriate goals to address all of the Student's recognized areas of deficit, and did not use baseline data which was measurable or articulate the goals that could be adequately measured for progress. They further argue that the Student's goals were repeated despite indication that the Student was not making progress, and no goals were drafted for identified areas of deficit, such as his anxiety, based on an erroneous assumption that the Student's willfull behavior was the most serious impediment to his work completion.

As indicated in the Statement of Facts above, evidence indicates that despite recognition on the part of the School District that the Student was exhibiting off-task or resistant behaviors that interfered with his ability to complete work and to achieve at a level commensurate with his intellectual ability, goals were repeated in the three contested IEPs, without significant modification or adjustment designed to address the observed deficits. The weight of the evidence further suggests that, although at times the Student may have willfully resisted work, this was more than likely occasioned by his hopelessness and lack of confidence around school work that proved difficult for him to accomplish, than it was out of an intention or desire to do nothing in school. It is instructive to note that School District staff members, such as [REDACTED] and [REDACTED], who

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<sup>152</sup> 20 USC §1414(d)(1)(A)(i)(IV)

<sup>153</sup> 34 CFR 300.320(a)(4)(i)-(iii)

testified most directly to their opinion that Student was choosing to perform to the maximum of his abilities, rather than struggling with instruction or material, may have been well-intentioned in their attempts to assist the Student, but have no specific training in Special Education instruction, and as such their opinions carry less weight than those of witnesses such as ██████ and ██████, who clearly related the Student's behavior to his academic struggles. In addition, despite knowledge of the Student's identified disabilities, the School District failed to draft goals, or revise existing goals, in a manner that sufficiently addressed how those disabilities were impacting his academic performance despite strong evidence, and even a degree of desperation on the part of well-intentioned ██████ staff who were working with the Student, to find new approaches for working with the Student. Thus, the weight of the evidence indicates that the District failed to write appropriate, individualized, measurable goals that addressed all of the Student's areas of need.

- ii. Did the School District fail to write an IEP that appropriately followed the recommendation of outside providers?

Parents of a child with a disability may obtain a privately funded evaluation by a qualified examiner who is not employed by the school district responsible for educating the child<sup>154</sup>. If parents seek and obtain such an evaluation and share it with the school district, the evaluation must be considered in any decision regarding the provision of FAPE to the child<sup>155</sup>. The only exception to this requirement is found in a situation where the privately obtained outside evaluation does not comport with agency, or school district, criteria for such evaluations<sup>156</sup>. As there is no such allegation with regards to the

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<sup>154</sup> 34 CFR §300.502(a)(1) and (a)(3)(i)

<sup>155</sup> 34 CFR §300.502(c)(1)

<sup>156</sup> Id.

parentally obtained evaluations in this matter, this latter point is moot. IEP Teams are required to consider, though not required to follow, the results of a parentally obtained private evaluation<sup>157</sup>. Failure to consider an outside evaluation has been found to be a procedural violation that only supports a finding of a denial of FAPE to a child when the violation actually interferes with the provision of FAPE to the child<sup>158</sup>.

In the instant case, during the applicable statute of limitations period, Parents privately obtained and funded, and presented to the school district for consideration, the [REDACTED], [REDACTED] and [REDACTED] Evaluations discussed in the Findings of Fact, above. In the case of each of these evaluations, documents in evidence and testimony of both Parent and District witnesses support the conclusion that the IEP Teams in question did consider the privately obtained evaluations. Parents contend that despite that consideration, the District erred in failing to follow the multiple recommendations contained in those evaluations, even despite the fact that the District had not completed any substantive evaluations of its own in those same areas of need.

The evidence presented establishes that the [REDACTED] and [REDACTED] evaluations obtained in or about July of 2012 were considered at the September 5, 2012 IEP Team Meeting. As a result, the Team added an auditory processing goal to the IEP and 30 minutes per week of speech and language services to address this goal. The clear language of each of these evaluations, in addition to [REDACTED]'s testimony, indicates that while auditory processing deficits were suggested by [REDACTED]'s audiology testing, this recommendation was not as strongly emphasized as were the recommendations seeking to remediate the evaluators' findings of the Student's deficits in word retrieval,

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<sup>157</sup> *TS v. Board of Educ. of Town of Ridgefield*, 10 F.3d 87, 20 IDELR 889 (2d Cir. 1993)

<sup>158</sup> *Dibuo v. Board of Educ. of Worcester Co.*, 309 F. 3d 184, 37 IDELR 271 (220)

memory weakness, and written language problems. Despite this fact, no evidence was offered either in the relevant IEP or in witness testimony to explicate why, if the findings of the report were persuasive enough to the team to add the less-emphasized auditory processing issue, the more emphasized deficits were not addressed in the same IEP. Thus, with regards to the [REDACTED] and [REDACTED] Evaluations, the weight of the evidence indicates that the School District erred in failing to follow the full recommendations of those reports.

With regards to the [REDACTED] Evaluation, the evidence supports the conclusion that the Evaluation was not provided to the School District until after Student had been unilaterally placed at [REDACTED]. The evidence further suggests the Evaluation was not only considered, but that recommendations were largely followed by the IEP Team on September 4, 2013, subsequent to the unilateral placement and the commencement of the instant action. In particular, the [REDACTED] Report makes a strong recommendation for the Student to receive more specialized instruction in a classroom setting with fewer distractions than the “current environment,” which at the time of her evaluation would have been the general education classroom. In contrast to prior IEPs, the September 4, 2013 IEP placed the Student in self-contained special education classrooms for all of his core curriculum courses. This subsequently drafted IEP, which is not challenged in the instant matter, was convened in response to the School District’s responsibility to conduct annual reviews of all IEPs, and while it makes strides toward the offer of a more comprehensive set of educational and related services for the Student, it also suggests some degree of culpability on the part of the School District, who rather than standing by the prior IEPs, which it defends in the instant case, made a wholesale change in approach

to the Student's appropriate services in the September 4, 2013 IEP. Given Dr.

██████████ and ██████████'s assessments that the identified deficits were strongly correlated to the Student's long-standing diagnosis of ADHD, in particular the pervasive executive functioning challenges, this change in approach also underscores the fact that these changes were not contemplated or made by the IEP Team at any time prior to the September 4, 2013 IEP.

- iii. Did the School District fail to write an IEP that included an appropriate transition plan?

Transition services are a set of coordinated activities that are designed to be within a results-oriented process focusing on improving a child with a disability's academic and functional achievement to facilitate that child's transition to post-secondary activities, and it should be based on the child's needs as well as take into account his or her strengths, preferences and weaknesses<sup>159</sup>. A transition plan may be insufficient to address a student's post-secondary goals if it fails to address the student's specific skill deficit, which might include - depending on student need - behavior management, self-monitoring and self-advocacy skills, or strategies for strengthening the student's functional, developmental and academic skills through ameliorating recognized deficits in areas of attention, social/emotional fragility and executive functioning problems<sup>160</sup>.

In the instant case, the evidence demonstrates that the Student's transition goal remained the same for each of the IEPs developed during the applicable statute of limitations period. As discussed in the Findings of Facts, above, these goals were substantively identical for the IEPs completed during Student's Sophomore and Junior years at ██████████. Despite a consistently articulated goal for the Student to attend a four-

<sup>159</sup> 34 CFR §300.42(a); 105 ILCS 5/14-8.03

<sup>160</sup> *Deer Creek-Mackinaw Comm. Unit Sch. Dist 701, 54 IDELR 138 (SEA IL 2010)*

year university, a goal which was echoed in [REDACTED] staff and the Mother's testimony as based on the Student's stated preferences, and realistic based on his identified intellectual capacity, no systematic or results-oriented process can be discerned within which his academic deficits would be addressed. In addition, despite evidence of Student's strong ADHD and anxiety-related challenges, no goals are articulated to address these challenges in a manner that would facilitate the Student's movement from secondary to post-secondary activities. While the District presented credible testimony with regards to having transition service options and counseling in place within the high school for students in general, as in the case of *Deer Creek-Mackinaw Comm. Unit. Sch. Dist. 701*, the actual transition plans developed for the Student and contained within his IEP can not be described as anything other than cursory and do not evidence a results-oriented approach to providing special education or related services to the Student that would facilitate his transition to post-secondary activities. Thus, the weight of the evidence indicates that the district failed to write IEPs that included appropriate transition plans for the Student.

- iv. Did the School District fail to conduct an appropriate FBA and write an IEP containing an appropriate BIP?

A student's IEP Team is required to conduct an FBA and develop a BIP when a disabled student is subjected to certain types of discipline or when a BIP is warranted because the disabled student exhibits behaviors that impede his learning or the learning of others in the classroom<sup>161</sup>. An FBA is an assessment process for gathering information regarding the target behavior, its antecedents and consequences, controlling variables, the student's strengths, and the communicative and functional intent of the behavior, for us in

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<sup>161</sup> 20 USC §1415(k)(1); 20 USC §1414(d)(3)(B)(i)

developing behavior interventions<sup>162</sup>. Although the specific components of BIPs are not identified in federal statute or regulations<sup>163</sup>, Illinois administrative rules require that the IEP of a student who requires a behavioral intervention plan shall, summarize findings of the FBA, summarize prior interventions implemented, describe behavioral interventions to be used, including those aimed at developing or strengthening alternative or more appropriate behaviors; identify the measurable behavioral changes expected and methods of evaluation; identify a schedule for review of the interventions' effectiveness and identify provisions for communicating with parents about their child's behavior and coordinating school-based and home-based interventions<sup>164</sup>.

In this matter, there is no issue regarding the Student being subjected to the type and duration of discipline that would require an FBA and BIP. Thus, the inquiry centers around a scenario where the IEP Team determined a behavioral intervention plan was warranted due to the Student exhibiting behaviors that impeded his learning. Specifically, the IEP Team determined the Student's work refusal required an FBA and BIP. As discussed in the Findings of Facts, above, the FBAs and BIPs contained in the IEPs developed within the applicable statute of limitations period are identical. While each of the requisite components of the FBAs and BIP are addressed in the IEPs, the undersigned Hearing Officer finds that the treatment each of these components received was superficial at best and not reasonably calculated to curtail the behaviors that were impeding the Student's learning. As an example, the "Summary of Previous Interventions Attempted" indicates, in relevant part, "[Student] also has preferential seating in all of his

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<sup>162</sup> 23 Ill.Admin.Code 226.75

<sup>163</sup> *Alex R.*, 375 F.3d 603

<sup>164</sup> 23 Ill.Admin.Code 226.230

classes to assist with focus and attention<sup>165</sup>.” The BIP then goes on in discussing instructional strategies or curriculum that would be helpful, “Preferential seating, prompting from instructor<sup>166</sup>.” To continue applying identical instructional strategies over two years of the Student’s schooling, while the Student’s behavior continued to devolve and the off-task behavior persisted cannot be found to demonstrate a reasonable calculation on the part of the School District that the BIP would lead to any benefit for the Student.

It should be noted that [REDACTED] staff indicated in testimony that they have not and would not think it necessary to include a BIP in the Student’s IEP since the target off-task behaviors addressed are seen to them as so intimately connected to the Student’s disability and thus remediable through instructional practices and accommodations rather than a BIP. While this might be taken as evidence that an FBA and BIP were not necessary for this Student, to conclude such would be to substitute the judgment of one set of professionals for another, and the undersigned Hearing Officer declines to do so. The [REDACTED] IEP Team determined an FBA and BIP were appropriate, and once they did, they triggered their responsibility to follow requisite procedures in adopting each, which they did, but also to then draft a BIP for inclusion in the IEP which was reasonably calculated to provide an educational benefit, and did not meet this standard. Thus, the weight of the evidence on this issue indicates the School District failed to write IEPs that provided appropriate FBA and BIPs.

- v. Did the School District violate the Parent’s right to meaningful participation in the IEP process?

IDEA clearly reflects a perspective that parental participation in the process of

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<sup>165</sup> P Doc 85; P Doc 109; P Doc 140

<sup>166</sup> P Doc 86; P Doc 110; P Doc 141

developing an IEP is integral to achieving the purposes the IDEA, stating:

It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process... as it did upon the measurement of the resulting IEP against a substantive standard<sup>167</sup>.

In the instant case, Parents contend that the School District violated their right to meaningful participating in the IEP process by unilaterally adding and deleting provisions to the IEP, including co-taught classes, services and accommodations. The evidence introduced suggests that the challenged services and accommodations are primarily the use of not only computers for completion of the writing process, but computers loaded with specific software designed to aid in the writing process, including Dragon Speak and Inspiration. In analyzing this contention, it is critical to note at the outset that testimony and evidence provided by both Parties clearly establishes that both Parents, and the Student's Mother in particular, were very involved in the Student's ongoing educational practice and that School District staff was receptive to, almost to the point of sometimes becoming reliant upon, the Parents' perspectives and suggestions. Parent's specific contentions center on the four corners standard which indicates that the services provided to a student should be limited by what is contained within the four corners of the IEP, and when a district deviates from what the parent believes to be the four corners of the IEP without parental input it is an inappropriate exclusion of the Parent's from the IEP process.

While the four corners standard does generally govern review of the contents of an IEP, the Seventh Circuit has also found that where there is vagueness in the IEP instrument, requires a reviewing entity to determine, after evaluation of the instrument in

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<sup>167</sup> *Rowley*, 458 U.S. at 205-206

its totality, whether parties regarded a methodology not explicitly stated in the IEP as an essential part of the plan, or only one of several ways in which the plan could be implemented<sup>168</sup>. The facts in the instant case are distinguishable, at least in part, from those of the John M. case in that the School District presented specific evidence that the IEPs did, in fact, contain reference to co-teaching courses for the Student. The Parents' evidence suggested that these references were not clearly made because additional special education minutes that the Student might be receiving from the special education teachers in the co-taught courses he was enrolled in were not explicitly delineated as additional special education minutes in the Student's IEP. However, the evidence also clearly established that co-taught classrooms at [REDACTED] are general education classrooms where, despite the fact that one of the teachers in the classroom has special education credentials, content is delivered consistent with the standards set for general education classrooms and goal, accommodations and modifications implemented for individual student's with disabilities in those classrooms are governed by each student's IEP. This is exactly what the IEP team decided on for the Student – general education classes. With regards to the provision of specific software programs on the computers made available to Student, the reference to provision of a computer as assistive technology and an accommodation for the Student is vague in that it does not name the specific software utilized on those devices. Looking at the relevant IEPs in their totality indicates that a continuing goal of the Student's education program was to assist him in the production of written work, a goal which was intended to be aided by the plan contained in the IEP, including the use of these software programs. Thus the programs represented one of several ways in which

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<sup>168</sup> *John M. v. Board of Educ. of Evanston Twtnshp. High Sch. Dist. 202*, 502 F.3d 708, 48 IDELR 177 (7<sup>th</sup> Cir. 2007)

the plan could be implemented. Whether or not this was an appropriate use of the software programs is not a question to be considered in the context of this claim raised by Parents. As such, Parents fail to sustain their burden of persuasion on this issue.

*B. Did the School District fail to provide social work services and speech and language services in an amount sufficient to meeting the Student's needs?*

Social work and speech-language pathology, or speech and language, services are related services under the terms of the IDEA and its implementing regulations<sup>169</sup>. Related services must be provided to a student with disabilities when they are required to assist that student in benefiting from special education<sup>170</sup>. The arguments with regard to provision of social work services and speech and language services are addressed separately below.

Parents contend that Student's documented ADHD, anxiety and depression, in addition to his increasing struggles with academics, task completion and resistance to completing school work, should have led the District to provide more than the social work services which were included in his IEPs for the relevant time period. Although the Student's Mother, as well as both [REDACTED] staff and [REDACTED] staff, credibly testified regarding the concerning levels of anxiety and resistance to school work demonstrated by the Student during his Sophomore year and increasingly during his Junior year at [REDACTED], no testimony was provided to suggest that social work services would have been appropriate to remediate those difficulties and would have assisted the Student in benefiting from his education. Thus, the undersigned Hearing Officer determines that Parents have not sustained their burden of persuasion on this issue.

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<sup>169</sup> 34 CFR §300.34(a)

<sup>170</sup> *Id.*

With regard to speech and language services, Parents' contentions regarding the failure of School District to follow the recommendation of private evaluators have been discussed above. In addition to the issue of the outside speech and language and audiology evaluations, the evidence indicates that as of September 5, 2012, the Student's IEP team did make a determination to add an auditory processing goal and 30 minutes of speech and language services per week. Testimony from both the Mother and the [REDACTED] Speech-Language Pathologist established that despite this addition, only two or three speech-language therapy sessions were actually provided to the Student between the development of the September 5, 2012 IEP and his disenrollment from [REDACTED]. The [REDACTED] Speech-Pathologist's log indicates at least 29 instances where scheduled 30 minute therapy sessions did not occur due to refusal or absence, this latter only being two instances<sup>171</sup>. The School District presented credible testimony that the Speech-Language Pathologist kept the Student on her weekly schedule and continued attempting to make contact with the Student to ask him to participate in his speech-language therapy sessions; however, the evidence also clearly establishes that despite the accumulating weeks of non-participation in a related services which the IEP Team had determined necessary for the Student to benefit from special education, as demonstrated by their addition of these minutes to the September 5, 2012 IEP, no steps were taken – outside of several telephone calls to the Student's Mother – to ensure his participation in these necessary sessions or in any way review the services to be provided in order to determine if any alternatives could be provided that would secure his needed participation. The weight of evidence on this issue demonstrates that the School District failed to provide

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<sup>171</sup> P Doc 7

required speech-language services that were necessary for the Student to benefit from his special education program.

*C. Did the School District err in failing to consider the Student eligible for ESY despite continued failure?*

ESY is defined as special education and related services provided to a child with a disability beyond the normal school year, in accordance with an IEP and at no cost to the parents<sup>172</sup>. A student must be provided with ESY if his or her IEP Team determines that it is necessary in order for the student to receive a FAPE<sup>173</sup>. Neither IDEA, nor its implementing regulations specify a standard which school districts are required to apply in determining whether a student needs ESY, and most jurisdictions rely on either the “Regression and Recoupment” standard or the “Significantly Jeopardized” standard. The former takes the position that ESY is necessary when it is determined that a student will experience significant regression if an education program is not provided and the time to recoup the lost skills will be excessive. The latter takes the position that ESY is needed when an extended break in schooling will jeopardize gains made during the school year.

In this instant case, the Student’s IEPs from the applicable statute of limitations period indicate the IEP Team decided ESY services were not necessary since the Student did not show academic regression beyond that of non-disabled peers. Parents’ argue that ESY should have been provided given the Student’s failing grades; however, while evidence of Student’s grades was supplied, no further evidence was presented as to how or why the IEP Team determination with regards to the need for ESY was erroneous. Therefore, the undersigned Hearing Officer determines that Parents have not sustained their burden of persuasion on this issue.

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<sup>172</sup> 34 CFR §300.106(b)

<sup>173</sup> 34 CFR §300.106(a)(2)

### III. Conclusion

The School District argues that this matter, and indeed the disabilities of the Student at the center of this dispute, are not as complex as Parents purport, and that this Hearing Officer should be guided by the *Rowley* standard and determine that educational benefit, and thus FAPE, was provided based on the Student's progression through education in the general education curriculum. The District further argues that evidence of educational benefit resides in the fact that this is a Student of average intelligence who, on standardized achievement measures can perform in the average and below average range and, on the [REDACTED] Evaluation, even perform above average in some testing areas. However, despite these assertions, the preponderance of the evidence suggests that Student's advancement from course to course and grade to grade at [REDACTED] offers very meager evidence of progress. His grades, and the manner in which he obtained some of those grades – such as through credit recovery – and progress reports instead suggest a student of average intelligence who was struggling significantly and losing faith in himself and his ability to obtain any education, and this reality was met with repetition of existing, ineffective, IEP interventions on the part of a staff despite many of them evidencing genuine investment in the Student and his progress. Also tellingly, the Student's class rank at the time of his withdrawal from [REDACTED] was 224 out of 244 students, hardly the expected ranking of a student of average intelligence making average progress in his schooling.

Therefore, based upon the review of the testimony and documents entered into evidence, the arguments and case law presented by counsel, and independent research conducted by the Hearing Officer, it is determined that the District failed to provide

appropriate evaluations to address all of the Student's identified or suspected disabilities, and failed to provide a FAPE to Student in each of the areas specified above.

Special Education Due Process Hearing Officers are empowered to exercise broad authority in fashioning appropriate relief, considering equitable factors, which will effectuate the purposes of IDEA<sup>174</sup>. Consistent with this broad authority, the undersigned Hearing Officer's determination of appropriate relief is based upon equitable factors including the significance of the denial of FAPE, especially taking into consideration the Student's age and potential proximity to high school graduation and considering the question of stability for a Student with emotional challenges, including anxiety and depression, which – when not addressed – fundamentally interfere with his ability to engage in his education. Determination of appropriate compensatory relief is made based on a qualitative analysis of what will make the Student whole in light of the established violations of FAPE.

Parents are entitled to private school tuition reimbursement when a school district has denied FAPE and the subsequent private placement was appropriate<sup>175</sup>. A private placement is appropriate for purposes of reimbursement if it confers educational benefit to the student<sup>176</sup>. Furthermore, a parent may only be reimbursed if at least ten days prior to effectuating the private placement, parents provide written notice to the school district of their intent to privately place<sup>177</sup>. In the instant matter, it is the conclusion of the undersigned hearing officer that the School District denied the Student FAPE during the period covered by the two-year Due Process statute of limitation. The Findings of Fact,

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<sup>174</sup> *Burlington*, 471 U.S. 359, 20 IDELR 532

<sup>175</sup> *Florence County Sch. Dist. 4 v. Carter*, 114 S. Ct. 361, 20 IDELR 532 (US 1993)

<sup>176</sup> *Warren G. v. Cumberland County Sch. Dist.*, 31 IDELR 27 (3d Cir. 1999)

<sup>177</sup> 34 CFR §300.148(d)(1)(ii)

above, establish that the private school was appropriate in that it has conferred an educational benefit to the Student since the unilateral parental placement. Furthermore, the evidence establishes that Parents presented the requisite ten-day notice.

### ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

1. The District shall convene an IEP meeting within 10 school days of receipt of this Final Decision to revise the student's IEP in accordance with the findings of this Decision. Specifically, in addition to complying with all requisite procedural requirements, the IEP Team shall:
  - a. Secure the participation of [REDACTED] staff at the IEP Team meeting;
  - b. Place the Student at [REDACTED] for the balance of the 2013-2014 academic school year;
  - c. Provide related service minutes to address the areas of deficit identified by the [REDACTED], [REDACTED] and [REDACTED] Evaluations, in a weekly quantity determined to be appropriate by the IEP Team;
  - d. Provide assistive technology including specific software programs deemed appropriate by the IEP Team;
  - e. Include goals that have objective baselines and benchmarks with objective measures of progress that address all areas of the Student's disabilities; and
  - f. Draft a transition plan to include goals that address the Student's academic needs and need for developing fundamental work-related skills.
2. The District shall reimburse Parents for tuition paid to [REDACTED] from April 1, 2012 through the date the above-referenced School District placement is effectuated. In order to obtain reimbursement, Parents will present paid invoices for the relevant period to the School District within 10 school days of receipt of this Final Decision and the School District will make reimbursement within 15 calendar days of receipt of such evidence of payment.
3. The District shall fund the independent evaluations obtained by Parent during the applicable statute of limitations period, as follows:

- a. The District shall fund the evaluation conducted by [REDACTED] in July of 2012. Parents will present a paid invoice for the [REDACTED] Evaluation to the School District within 15 calendar days of receipt of this Final Decision and the School District will make reimbursement within 15 calendar days of receipt of such evidence of payment;
  - b. The District shall fund the evaluation conducted by [REDACTED] in July of 2012. Parents will present a paid invoice for the [REDACTED] Evaluation to the School District within 15 calendar days of receipt of this Final Decision and the School District will make reimbursement within 15 calendar days of receipt of such evidence of payment; and
  - c. The District shall fund the evaluation conducted by Dr. [REDACTED] in March of 2013. Parents will present a paid invoice for the [REDACTED] Evaluation to the School District within 15 calendar days of receipt of this Final Decision and the School District will make reimbursement within 15 calendar days of receipt of such evidence of payment.
4. The School District shall hold in abeyance the Student's graduation for one additional school year, irrespective of credits accumulated toward graduation in the intervening period.
  5. The School District shall fund one additional year of placement at the [REDACTED] for the 2014-2014 school year as compensatory services and at the appropriate time, draft an IEP, consistent with the requirements of Order No. 1, above, for that additional year of placement.

In accordance with 105 ILCS 5/14-8.02a(h), within 45 school days of receipt of this Order, the District shall submit proof of compliance to:

Andy Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, IL 62777-0001

**NOTICE OF RIGHT TO REQUEST CLARIFICATION**

Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: February 10, 2014

  
Beatriz A. Diaz-Pollack, Impartial Hearing Officer

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badiazpollack@gmail.com

APPENDIX A

[REDACTED] v. [REDACTED]

ISBE Case No: 2013-0470

Child	[REDACTED]
Attending School	[REDACTED] [REDACTED] [REDACTED]
Child's Parents/Petitioners	[REDACTED] and [REDACTED]

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the Final Decision and Order was sent to the Parties through their respective counsel identified below and to ISBE by certified mail and electronic mail and directed to:

  
*Electronic Mail:*   
*Electronic Mail:* 


and

  
*Electronic Mail:* 

and

Andy Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, IL 62777-0001  
*Electronic Mail:* [aeulass@isbe.net](mailto:aeulass@isbe.net)

on February 10, 2014.

  
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