

**ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**

██████████

Student,

v.

Case No. 2014-0230

██
██

School District.

Philip C. Milsk,
Impartial Hearing Officer

RECEIVED

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SPECIAL EDUCATION
SERVICES

FINAL DECISION AND ORDER

BACKGROUND

██████████ is a well-liked and intelligent young ██████████ with high-functioning autism (also known as Asperger's Syndrome). ██████████ eligibility for special education under the federal Individuals with Disabilities Education Act ("IDEA") and the Illinois School Code terminated on ██████████ twenty-second birthday, ██████████. The issues in the case are set forth below.

This case was initiated on November 22, 2013, when the School District ("District"), by its counsel, submitted a request for a due process hearing following a request for an independent educational evaluation ("IEE") by ██████████ mother, ██████████ ("Parent"). See, 34 C.F.R. 300.502(b)(2)(i). This hearing officer was assigned to the case on November 22, 2014. Parent and ██████████ were not represented by counsel at the time, although Parent had a non-lawyer advocate assist her briefly, and the advocate participated in on one status conference call early in the case. Resolution efforts were unsuccessful, and a State Board of Education-sponsored Mediation session held on February 3, 2014, failed to resolve the dispute.

During a status conference call on February 21, 2014, Parent stated that she wanted to file her own hearing request and counter-complaint raising additional issues. She was given fourteen days to file her counter-complaint. The counter-complaint was filed by the Parent on March 5, 2014, by e-mail. On March 8, 2014, an Order was entered re-starting the timelines in the case because the Parent's counter-complaint raised new issues.

On March 18, 2014, the District filed a Motion to Dismiss challenging the sufficiency of the Parent's complaint pursuant to 20 U.S.C. 1415 (c)(2)(A). After carefully reviewing the complaint and the District's Motion, and taking into consideration that the Parent and Student were not represented by counsel at the time, this hearing officer

determined that some of the allegations made by the Parent were adequate to survive the District's challenge, but needed further clarification. Accordingly, on March 24, 2014, an Order was entered giving the Parent an additional fourteen days to provide additional details with respect to three of her issues. (Subsequently the Parent was allowed five additional days at her request.)

On April 11, 2014, the Parent filed her addendum to the counter-complaint. The District was given ten days to file a response and fifteen days to file a sufficiency challenge in accordance with applicable procedures under IDEA.

The District filed a Motion to Dismiss for lack of sufficiency on April 25, 2014. After reviewing the Parent's addendum, the District's Motion, and an e-mail message from the Parent dated April 25, 2014, responding to the District's Motion, this hearing officer entered an Order on May 10, 2014, defining the issues that were properly raised by the Parent with respect to alleged violations that occurred on or after March 5, 2012, within the two-year Statute of Limitations as set forth in IDEA. 20 U.S.C. 1415(b)(6); 34 C.F.R. 300.507 (a)(2).

After a number of status conference calls and continued efforts to resolve this matter, Parent retained counsel in July, 2014. The Pre-hearing Conference was held on August 18, 2014, with counsel for the parties. A Pre-hearing Report and Order was issued immediately following the Pre-hearing Conference.

Settlement discussions were held after the Pre-hearing Conference. On or about October 6, 2014, this hearing officer was informed by counsel that a settlement had been reached. However, three weeks later during a status conference call, counsel reported that the settlement had fallen apart and the matter would be going to hearing.

The due process hearing concerning was held at ██████████ ██████████ ██████████, Illinois on January 26 and 27, 2015. This was a closed hearing. ██████████ was not present at the hearing, but gave testimony by speaker phone. Parent was present throughout the hearing. District representatives were ██████████ ██████████, Director of Special Education for the District's high schools, and ██████████ ██████████, Director of the ██████████ ██████████ Special Education Cooperative. A list of hearing participants and witnesses is provided in Appendix I.

JURISDICTION

This hearing officer has jurisdiction under 20 U.S.C. 1415, 34 C.F.R. 300.507, and 105 ILCS 5/14-8.02a.

ISSUES

1. Should the District provide an independent educational evaluation ("IEE") of [REDACTED] as a compensatory service to determine [REDACTED] social, emotional, behavioral and/or post-secondary transition needs?
2. Should the District provide compensatory services to [REDACTED] to address [REDACTED] social, emotional, and behavioral needs?
3. Should the District provide compensatory services to [REDACTED] to address [REDACTED] post-secondary transition life skills?

FINDINGS OF FACT

After considering the evidence and arguments of counsel, this hearing officer makes the following findings of fact:

1. **[REDACTED]'s Strengths**
[REDACTED] is a 22 year-old [REDACTED] with autism who will turn 23 on [REDACTED]. [REDACTED] functions at the high end of the autism spectrum and has what is commonly known as Asperger's Syndrome. (Testimony of Parent). [REDACTED] has many strengths. [REDACTED] is bright and articulate with a sound general knowledge base and a good sense of humor. [REDACTED] is employable and has ambitions. (Testimony of [REDACTED]). [REDACTED] IEPs indicate that [REDACTED] has strong writing skills. [REDACTED] is physically active, understands the importance of physical fitness (Exhibits, p. 276 under "Student Strengths"), participated in Special Olympics track and field, and became a team leader. (Testimony of [REDACTED], [REDACTED]). [REDACTED] has friends and family who care very much about [REDACTED] and are concerned about [REDACTED] welfare. (Testimony of Parent, [REDACTED], [REDACTED] and [REDACTED]).
2. **[REDACTED]'s Post-secondary Transition Needs**
[REDACTED] has deficiencies in the areas of social interaction, social understanding, and obsessive and compulsive thoughts and behaviors. (Testimony of Parent). [REDACTED] does well with structure, but is challenged when [REDACTED] is outside of [REDACTED] routine. (Testimony of [REDACTED]). Changes in schedule or routine cause [REDACTED] significant frustration. (Testimony of [REDACTED]). [REDACTED] needs to learn how to cope with frustration and problem solving that trigger emotional responses. (Exhibits, p. 162). On a job site [REDACTED] has may have difficulty when [REDACTED] is given a direction or asked to take corrective action that [REDACTED] does not agree with. (Exhibits, p. 239—statement of [REDACTED], [REDACTED] Walgreens job coach at [REDACTED] Center). There is nothing in the record indicating that [REDACTED] is violent or aggressive by nature. It appears that [REDACTED] often becomes frustrated with [REDACTED] in certain situations and needs help to talk through [REDACTED] frustrations, feelings and responses. (Testimony of [REDACTED])
3. **[REDACTED]'s Relevant Educational History**

█████ attended high school in the District for four consecutive years beginning in the 2007-08 school year. █████ class graduated in 2011. During the 2011-12 school year █████ eligibility for special education transition services continued and █████ participated in the District's post-secondary transition program at the █████ █████ Center.

█████ placement at the █████ █████ Center was terminated after an incident involving a knife ("knife incident") on January 8, 2013. This was preceded by an incident before the holiday break in December, 2012, when █████ became upset because the other students did not want to watch a movie that █████ had chosen, and █████ allegedly stated that █████ wished █████ had a gun and allegedly made a reference to the Sandy Hook School shootings that had just occurred about a week before in Connecticut. A Manifestation Determination Review process pursuant to 20 U.S.C. 1415(k)(1)(E) was commenced by the District following the knife incident. (See, Exhibits, p. 336). The official determination of the IEP Team was that the knife incident was not a manifestation of █████ disability, but only to placate the Parent after a series of contentious meetings in early 2013. (Testimony of █████ █████). It was clear from the testimony of █████ █████ and █████ that the IEP Team had actually determined that the conduct was a manifestation of █████ disability.

█████ was then placed in a therapeutic program at the █████ █████ Program from February 6, 2013, until March 14, 2013. █████ participation at █████ █████ was discontinued by █████ █████ following several behavioral incidents and a determination by █████ █████ that it could not meet █████ needs. (Exhibits, p. 321, letter to Parent). It is not clear whether █████ █████ was intended to be a 45-day alternative educational setting under 20 U.S.C. 1415(k). From the testimony of various witnesses including school personnel and the Parent, it appears that if things had worked out for █████ at █████ █████ █████ probably would have continued there.

After leaving █████ █████ █████ received homebound services from the District beginning on March 15, 2013, while the district looked into other placement options. (Exhibits, p. 210). █████ entered the █████ █████ program in █████, Illinois on April 23, 2013, and █████ continued at █████ █████ until █████ eligibility terminated on March 4, 2014, the day before █████ 22nd birthday. (105 ILCS 5/14-1.02)

█████ is currently taking online courses through █████ Community College. (Testimony of █████).

4. Vocational and Life Skills

The program offered by the District for █████ in regard to vocational and life skills included training and activities to develop vocational and independent living skills such as work experience, self-advocacy, personal finance, shopping, and

domestic skills such as cleaning and cooking. [REDACTED] participated in Special Olympics track and field as a sprinter and became a team leader. District staff assisted [REDACTED] in [REDACTED] effort to obtain SSI benefits. (Testimony of [REDACTED]). At [REDACTED] Center [REDACTED] worked with a job coach at a Dollar Store and then at a Walgreen's. (Testimony of [REDACTED] and [REDACTED]). At [REDACTED] [REDACTED] worked at another Walgreens, a bakery and did some online work for Infinitech. (Testimony of [REDACTED] and [REDACTED]). [REDACTED] especially enjoyed [REDACTED] work at the bakery. (Testimony of [REDACTED]) There is nothing in the record to show that the vocational and transitional life skills components of [REDACTED] transition program were inappropriate or inadequate after March 5, 2012.

Services for Social, Emotional and Behavioral Needs

The District provided school social work services for [REDACTED] throughout [REDACTED] four years of high school. [REDACTED] LCSW, was [REDACTED] social worker. [REDACTED] provided 25 minutes per month of social work services to [REDACTED] in [REDACTED] freshman and sophomore years, and 60 minutes per month in [REDACTED] third and fourth years until the minutes were increased to 90 minutes per month in March 2011. The increase in minutes was an IEP team decision and [REDACTED] was not aware of the reason for the increase. [REDACTED] was able to ask for additional help if needed. Most of the services provided by [REDACTED] were in small groups of 4-6 students. [REDACTED] testified that he did not recall any instance in which [REDACTED] asked for additional services. The groups worked on social communication. [REDACTED] attended a training program on serving students with autism after [REDACTED] had exited the high school.

[REDACTED] received no individual social work sessions [REDACTED] first year at the [REDACTED] Center. (Testimony of Parent). [REDACTED] took medication related to [REDACTED] emotional and behavioral needs during the first year. [REDACTED] had a very good year, with less edginess and more enthusiasm. [REDACTED] job placement was at a Dollar Store where [REDACTED] boss was very accommodating. (Testimony of [REDACTED]).

[REDACTED] went off of [REDACTED] medications the second year at [REDACTED] Center. [REDACTED] boss at Walgreens was less accommodating than the one at the Dollar Store. (Testimony of [REDACTED]). [REDACTED] received 30 minutes per week of social work services at the [REDACTED] Center in 2011-12. The services were provided in groups. Individual services were available upon request. The March 15, 2012 IEP does not contain goals for social and emotional needs. (Testimony of [REDACTED]; Exhibits, p. 284). The school social worker at [REDACTED] Center was [REDACTED], who did not testify.

The [REDACTED] IEP of March 12, 2013, provided 20 minutes per week of individual counseling and 200 minutes per week of group counseling and addressed "social relationships". (Exhibits, p. 208).

During this period of time the District also offered private counseling services for [REDACTED] through [REDACTED] after listening to the Parent's concerns during

the series of Manifestation Determination Review meetings in January and February, 2013. (Testimony of [REDACTED]; Exhibits, p. 319). The [REDACTED] IEP of April 23, 2013, provided 40 minutes per week of individual counseling and 200 minutes per week of group counseling. The IEP also provided for an individual aide for [REDACTED] (Exhibits, p. 165). The IEP of November 7, 2013, provided the same amount of counseling services. (Exhibits, p. 54). A licensed clinical psychologist provided the counseling services at [REDACTED] (Testimony of [REDACTED]). There was no evidence presented that [REDACTED] had any major emotion melt-downs while at [REDACTED]. There were no major incidents. This was because [REDACTED] was provided the proper structure and supports such as a written schedule, written visual support, practice scripts as to what [REDACTED] should say under certain circumstances, and discussions with staff in advance about scheduling changes. Staff also intervened directly when [REDACTED] was having difficulty coping. (Testimony of [REDACTED]). [REDACTED] knew and was able to implement appropriate instruction and support for individuals with autism. (Testimony of [REDACTED].)

5. Emotional Trauma

This hearing officer finds that the District did not inflict emotional trauma or damage on [REDACTED] while [REDACTED] was in high school or at the [REDACTED] Center and [REDACTED] as claimed by the Parent. The incidents of emotional melting down described in the record (see, e.g., the testimony of Parent) may have been the result of inadequate staff training and knowledge regarding appropriate interventions for a person with autism in situations in which the person is frustrated, angry or having coping difficulties. I find that these incidents were due at least in part to inadequate social work and counseling services on an individual basis.

The emotional and behavioral incidents involving [REDACTED] in high school, at [REDACTED] Center and at [REDACTED] are not atypical of an individual with autism. [REDACTED] testimony comparing [REDACTED] with the other programs [REDACTED] was in appears to be on target: [REDACTED] knew how to intervene for a person with autism and that explains [REDACTED] success there. Another key factor for [REDACTED] success at [REDACTED] was the provision of 40 minutes per week of individual counseling services by a licensed clinical psychologist.

6. Independent Educational Evaluation

The Parent requested an independent evaluation of [REDACTED] emotional needs after the knife incident at [REDACTED] Center. The District offered the Parent an evaluation by [REDACTED], a psychiatrist. There was an objection by the Parent regarding the purpose of the evaluation and the disclosure of information by [REDACTED] to the District. The Parent wanted an assessment of the emotional trauma she alleges that [REDACTED] suffered during the time [REDACTED] was in high school, while the District offered the independent evaluation for the purpose of developing appropriate post-secondary transition and related services for [REDACTED]. The Parent

did not want [REDACTED] to share his evaluation with the District's IEP team and did not sign a consent for the evaluation. (Exhibits, pp. 319, 323, 324, 329; Testimony of [REDACTED]). The Parent testified that while [REDACTED] was at [REDACTED] an evaluation supervised by [REDACTED], a psychologist, was conducted. She stated that she wanted [REDACTED] evaluated at [REDACTED], but held off at the request of [REDACTED].

Nothing in the record shows that a diagnostic evaluation of [REDACTED] social, emotional and behavioral intervention needs was conducted from March 5, 2012 until [REDACTED] exited the program at [REDACTED] the day before [REDACTED] 22nd birthday. Counsel for the District stated for the record that the District continues to be willing to provide an independent evaluation of [REDACTED]'s emotional needs.

CONCLUSIONS OF LAW

Standard of Proof

The standard of proof in impartial special education due process hearings under IDEA is preponderance of the evidence. 20 U.S.C. 1415(i)(2)(C)(iii). Under this standard, the party seeking relief must establish that the fact sought to be proved is more probable than not.

Compensatory Services

An award of compensatory services is authorized under IDEA for students whose eligibility has expired if the special education services provided prior to the expiration of eligibility are found to have been inadequate. *Board of Education of Oak Park-River Forest High School Dist. 200 v. Illinois State Board of Education*, 79 F.3d 654 (7th Cir. 1996). An award of compensatory services is an equitable remedy that may be awarded to students and parents under IDEA. *Minor T.G. v. Midland School Dist.*, 848 F. Supp.2^d 902(C.D. Ill. 2012). The Seventh Circuit has not established an analytical approach for determining an award of compensatory services under IDEA. However, our District Courts have adopted a qualitative rather than a quantitative approach to an award of compensatory services, following *Reid v. District of Columbia*, 401 F.3d 516(D.C. Cir. 2005). See, e.g., *Petrina W. v. Chicago Public School Dist. 299*, 2009 WL 5066651(N.D. Ill. 2009); and *Minor T.G.*

The quantitative analysis uses a rote formula for determining compensatory services awards based upon the period of time the student is denied a FAPE. *Mary T. v. School Dist. of Philadelphia*, 575 F.3d 235(3rd Cir. 2009). The qualitative approach favored by *Reid* and followed in *Petrina W.* and *Minor T.G.* emphasizes a flexible approach that focuses on the individual needs of the student rather than a mechanical calculation of hours

Independent Evaluation

Evaluation procedures under IDEA must assess the student in all areas related to the suspected disability, including, if appropriate, social and emotional status. 34 C.F.R. 300.304(c)(4), and are to be administered by trained and knowledgeable personnel. 34 C.F.R. 300.304(c)(1)(iv). The Parent of a student with a disability has the right to obtain an independent educational evaluation of the student at public expense if the Parent disagrees with an evaluation obtained by the school district. 34 C.F.R. 300.502(b).

The District failed to prove by a preponderance of evidence that the evaluations it conducted assessed [REDACTED] in all areas of need. The District did not assess [REDACTED] social, emotional and behavioral needs in areas such as social interaction, social communication, inability to cope appropriately with frustration, inappropriate emotional reactions to certain circumstances and behaviors that clearly are part of C.D.'s disability. The incidents in December 22, 2012 (gun comment), January 8, 2013 (knife incident), the problems [REDACTED] was having at [REDACTED] job placement at Walgreens in 2012 (Testimony of [REDACTED]), the brief suspensions from [REDACTED] and the terminations of [REDACTED] placements at the [REDACTED] Center and [REDACTED] in 2012-13 were obvious warnings that [REDACTED] social, emotional and behavioral needs were not properly assessed and that the interventions being used in some situations were ineffective and inappropriate.. [REDACTED]'s subsequent success at [REDACTED] showed that when appropriate interventions and supports were provided [REDACTED] emotional and behavioral needs were less acute.

Further supporting the Parent's request for an independent evaluation as a compensatory service is the District's offer to provide the evaluation by [REDACTED] in 2013, and its counsel's statement on the record that the offer of an evaluation is still on the table.

The independent evaluation will provide [REDACTED], [REDACTED] family and adult services agencies with important diagnostic information and recommendations for therapeutic services and perhaps medication. This information would have benefited [REDACTED] had it been available during the time [REDACTED] was at [REDACTED] Center, [REDACTED] and [REDACTED].

The independent evaluation will also provide guidance to the District in providing compensatory counseling services. (See below).

Compensatory Counseling Services

This hearing officer finds that the Parent has established by a preponderance of the evidence that from March 5, 2012, until [REDACTED] started at [REDACTED] on April 23, 2013, [REDACTED] was denied a FAPE because [REDACTED] did not receive appropriate individual counseling or social work services to address [REDACTED] social, emotional, and behavioral needs. The record is weak on the question of how much compensatory counseling time [REDACTED] should be awarded to address [REDACTED] individual needs. There was no expert testimony on this issue. See, e.g., *Petrina W. v. Chicago Public School Dist. 299*, 2009 WL 5066651 (N.D. Ill. 2009). However, the District had offered the Parent 10 hours of outside counseling for [REDACTED] in

March 2013 (Testimony of ██████████ Exhibits, p. 319), This hearing officer finds that amount of individual counseling services at the District's expense to be sufficient to address the individual needs of ██████ and to be an appropriate award of compensatory services in the area of individual social, emotional and behavioral counseling.

Compensatory Vocational and Transitional Life Skills Services

The Parent has not established by a preponderance of the evidence that the District denied ██████ a FAPE with respect to ██████ vocational and transitional life skills services. There is nothing in the hearing record showing that the services provided C.D. since March 5, 2012 in these domains were inappropriate in nature and scope. The record clearly shows that ██████ participated in activities such as work experience with job coaches, personal finance, homemaking such as cooking and housekeeping, self-advocacy, shopping and community living. The services and experiences were appropriate and tailored to meet ██████ individual needs. Accordingly, no award of compensatory vocational and transitional life skills services will be granted.

ORDER

It is hereby ordered as follows:

1. Within 30 days of the date of this Order, the District will schedule an independent evaluation of ██████ with a qualified mental health professional with knowledge and experience evaluating and treating adolescents and young adults with autism. The evaluator may be ██████, ██████████, or another qualified mental health professional with credentials comparable to ██████. The evaluation will assess ██████'s social, emotional and behavioral needs, and make recommendations regarding the services ██████ requires in the area of social, emotional and behavioral health that will assist ██████ to function appropriately in the community, in employment and in post-secondary education and/or vocational training. The District will pay for the independent evaluation and, depending on C.D.'s preference, either provide round-trip transportation for ██████ for the independent evaluation, or reimburse the Parent for her mileage and expenses in accordance with the District's travel reimbursement policies.
2. Within 14 days after the issuance of a written report by the independent evaluator, the District will either arrange for, or approve ██████'s choice of, an independent qualified mental health professional who has knowledge and experience in providing social, emotional and behavioral services to adolescents and young adults with autism. The District will pay for 10 one-hour sessions of individual counseling for ██████ with the qualified mental health professional, and, depending upon ██████'s preference, either provided round-trip transportation for the counseling sessions or reimburse the Parent for her mileage and expenses in accordance with the District's travel reimbursement policies. The nature and

scope of the individual counseling sessions will be consistent with the recommendations of the independent evaluator.

3. As a condition for having the District pay for the counseling services and transportation described in #2 above, the Parent and/or █████ will authorize the disclosure by the independent evaluator to either the District's legal counsel, or to an official of the District who is authorized to approve the counseling services, sufficient to inform the District of the nature and type of counseling recommended by the independent evaluator. The purpose of this condition is to ensure that the services comply with requirements of this Order and are consistent with the recommendations of the independent evaluator.
4. The request for compensatory services in the areas of vocational and transitional life skills is denied.
5. Pursuant to 105 ILCS 5/14-8.02a(h), the District shall (a) submit evidence of compliance with this Item #1 of this Order to the Illinois State Board of Education no later than 35 days after the date of receipt of this Order, and (b) submit evidence of compliance with Item #2 of this Order to the Illinois State Board of Education within 90 days of the date of receipt of the Order.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILCS 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 to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 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's 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.

DATE: February 5, 2015

[REDACTED]

Philip C. Misk, Hearing Officer

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

FAX: [REDACTED]

[REDACTED]

CERTIFICATE OF SERVICE

I, Philip C. Misk, Impartial Hearing Officer in the above-captioned matter, hereby certify that I served a true and correct copy of the foregoing Final Decision and Order upon the following persons by certified mail in accordance with section 14-8.02a(h) of the Illinois School Code on February 6, 2015:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Andy Eulass
Illinois State Board of Education
Division of Special Education
100 N. First Street
Springfield, IL 62777-0001

[REDACTED]

Philip C. Misk