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

**SPECIAL EDUCATION  
SERVICES**

[REDACTED]  
Student,

v.

Case No. 2015-0263

[REDACTED]  
School District.

Philip C. Milsk,  
Impartial Hearing Officer

**FINAL DECISION AND ORDER**

**INTRODUCTION**

[REDACTED] ("Student"), is a 17 year-old (D.O.B. 7/12/97) high school senior who resides in the [REDACTED] ("School District"). The Student entered the [REDACTED] ("[REDACTED]") in the 2011-12 school year and attended [REDACTED] until October 7, 2014, when he was suspended for 10 days pending expulsion for coming to school under the influence of marijuana. A manifestation determination review ("MDR") was held on October 10, 2014, and it was determined that the behavior resulting in disciplinary action against the Student was not a manifestation of his disabilities. The School District Board voted to expel the Student from [REDACTED] on October 15, 2014. An IEP meeting was held on October 20, 2014, and he was placed at the [REDACTED] ("[REDACTED]") for a 45-day alternative educational placement pursuant to 20 U.S.C. 1415(k)(1)(G)(ii). Student has continued to attend [REDACTED] and is scheduled to graduate from [REDACTED] in May, 2015. There is no dispute that he is a student with disabilities and that he is eligible for special education under the Individuals with Disabilities Education Act ("IDEA"), as amended by the Individuals with Disabilities Educational Improvement Act of 2004, and the Illinois School Code.

**PROCEDURAL HISTORY**

This case was initiated on January 20, 2015, when the Student's mother, [REDACTED] ("Mother"), submitted a Due Process Hearing through her attorneys. The parties had been engaged in ISBE-sponsored Mediation following a request for Mediation by the Mother on October 17, 2014. The Mediation was unsuccessful and the hearing request followed. The case was assigned to this hearing officer on January 21, 2015, as an expedited hearing case because it involved an expulsion. The Mother's request for hearing included an "Emergency Motion to Enforce Stay-Put" seeking an Order directing the School District

to allow the Student to return to [REDACTED]. An Order was issued on January 24, 2015, giving the School District time to respond to the Emergency Motion, allowing the Mother/Student to file a reply by February 1, 2015, and scheduling a status conference call on February 2, 2015. Prior to the status conference the parties signed a waiver of the resolution meeting and submitted the written waiver on January 27, 2015.

After the District's response to the Emergency Motion and the Parent's reply were received, a status conference was held on February 2, 2015, with counsel for the parties. On February 3, 2015, an Order was entered converting the expedited due process hearing to a standard hearing because the exigent circumstances making an expedited hearing appropriate no longer existed and the Mother had not requested an expedited hearing. The applicable timelines were adjusted accordingly.

On February 12, 2015, an Interim Order on the Mother's Emergency Motion was entered based on the pleadings, exhibits, discussion during the February 2, 2015, status conference, and written arguments of counsel. The Interim Order, *inter alia*, directed the School District to convene an IEP meeting to determine the educational services the Student would receive pending the final due process hearing decision. 20 U.S.C. 1415(k)(D). The IEP meeting was held on February 23, 2015, and an IEP was prepared. The Student's educational placement under the Interim Order, consistent with a Stay of Expulsion Agreement signed by the parties on October 15, 2015, was to be an alternative educational program in [REDACTED] operated by the Regional Office of Education. However, that placement was not available and the Student continued to attend [REDACTED].

The Pre-hearing Conference in this matter was held on March 2 and 5, 2015, by conference call. An Agreed Motion to Continue was filed on March 6, 2015, and granted on March 9, 2015, to allow time for an independent psychological evaluation of the Student that his Mother was obtaining at her expense. The March 9, 2015, Order also established hearing dates.

The Due Process Hearing was held at [REDACTED] on April 27, 2015, [REDACTED] High School on April 30, 2015, to accommodate witnesses from [REDACTED], and May 1, 2015 at [REDACTED]. Closing arguments of counsel were presented on the record by conference call on May 4, 2015, and the record was closed upon the conclusion of closing arguments.

## **JURISDICTION**

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

## **ISSUES**

The issues to be determined are as follows:

- I. Did the School District conduct an appropriate re-evaluation of the Student from January 20, 2013, until the present, and, if not, did this result in the denial of FAPE?

2. Did the Student's IEPs from January 20, 2013, until the present offer FAPE to the Student by appropriately addressing all of his educational and related services needs that result from his disabilities?
3. Did the Student's IEPs from January 20, 2013, meet the requirements of IDEA with respect to the statements of the Student's present levels of performance and measureable annual goals and, if not, did this result in the denial of FAPE?
4. Did the School District develop appropriate transition goals and provide appropriate transition services for the Student from January 20, 2013 to the present?
5. Did the School District conduct an appropriate functional behavioral analysis ("FBA") for the Student and/or develop an appropriate behavioral intervention plan ("BIP") for the Student from January 20, 2013, until the present and, if not, did this result in the denial of FAPE?
6. Did the School District conduct an appropriate manifestation determination review ("MDR") for the Student on October 10, 2014?
7. Is the Stay of Expulsion Agreement of October 15, 2014, valid and enforceable?
8. Did the Mother properly request an independent educational evaluation at public expense and/or an evaluation by the School District during the 2014-15 school year and, if so, did the School District meet its responsibilities in accordance with applicable law and regulations?
9. Is the Mother entitled to reimbursement of the cost of an independent psychological evaluation of the Student she obtained at her expense in April, 2015?
10. Would an Order directing the School District to allow the Student to participate in the [REDACTED] commencement ceremony on May 16, 2015, be a proper exercise of the hearing officer's authority if Issue #6 is decided in favor of the Student and Mother?

## **FINDINGS OF FACT**

### **INTRODUCTION**

Student is 17 years of age and will turn 18 on July 12, 2015. He lives with his Mother and stepfather, [REDACTED] ("Stepfather") in [REDACTED], IL and is a resident of the School District. He is in his fourth year of high school. He has been attending [REDACTED] since the 2011-2012 school year. At all times pertinent to this hearing he has been eligible for special education services and has had an IEP.

On October 7, 2014, Student came to school under the influence of an illegal substance, marijuana, in violation of School District policy. (District Exhibits 14, 15; Joint Exhibits 31, 34). He was suspended pending an expulsion. A manifestation determination review ("MDR") meeting was held on October 10, 2014, and the determination was that the conduct resulting in disciplinary action was not a manifestation of his disability (Joint Exhibit 19). On October 15, 2014, the School District's board voted to expel him for two years.

A Stay of Expulsion Agreement was executed on October 15, 2014, providing that the Student would be provided educational services at the Regional Office of Education's Alternative Education Program, if accepted, and allowed to return to the [REDACTED] grounds on June 10, 2015, and if he attends school and meets graduation requirements by May 13, 2015. (Joint Exhibit 32). The evidence is inconclusive as to whether the Mother was advised of the Student's right to receive educational services even if she did not sign the agreement. (Testimony of Parent and Superintendent [REDACTED]). However, this has no impact on the Order in this case because of the decision on the MDR issue.

Following the expulsion hearing on October 15, 2014, an IEP meeting was held on October 20, 2014. Because the Regional Office of Education Alternative Education Program did not have an opening for the Student, the [REDACTED] Principal, [REDACTED] was invited to the meeting to consider the Student for admission to [REDACTED]. (Joint Exhibit 23, p. 91; Testimony of [REDACTED]). It was [REDACTED]'s understanding at the time that the placement at [REDACTED] was for 45 days (Testimony of [REDACTED]). See, 20 U.S.C. 1415(k)(1)(G). Student began attending [REDACTED] after the October 20, 2014, IEP meeting and continues to attend [REDACTED].

[REDACTED] is a State-approved nonpublic therapeutic day school operated by the [REDACTED] (Parent's Exhibit 73). [REDACTED] accepts students with behavioral difficulties with and without IEPs. (Testimony of [REDACTED]). The travel time from Student's home to [REDACTED] is approximately 45 minutes. (Parent's Exhibit 74, p. 331.) Student is on track to complete his high school credit hours in May, 2015. The School District has been providing transportation for the Student and covering the costs of [REDACTED]. (Testimony of Superintendent [REDACTED]).

#### STUDENT'S STRENGTHS AND DEFICITS

Student has a significant emotional disorder and an attention deficit disorder. His disabilities have a substantial impact on his educational performance. (Testimony of Mother, Dr. [REDACTED], PhD., [REDACTED], [REDACTED] and other [REDACTED] teachers, [REDACTED] Parent's Exhibits 38 and 39, Joint Exhibit 1). Joint Exhibits 14, 15, 16, his

IEPs since April, 2012, stated his primary eligibility as “emotional disturbance” and contained statements of his present levels of performance that identified lack of attention, being off-task, distractibility, incomplete work, certain inappropriate behaviors, lack of motivation, sleeping in class, etc.).

I find the Mother to be a credible witness with respect to the Student’s strengths and deficits. She testified that he is kind, helpful to friends and family, does things with his younger sister and enjoys doing “hands-on” things, especially working on vehicles. His challenges include poor choices of peers, anxiety, depression, low self-esteem and difficulty expressing his thoughts and feelings. She identified certain significant events in his life that have had an impact on his social and emotional development such as abandonment by his biological father when the Student was an infant, the suicide of his ex-girlfriend during his junior year, and the death of a close cousin due to a drug overdose in 2014. She also testified that the Student has expressed suicidal tendencies on several occasions during high school. (Testimony of Mother).

School personnel lacked a thorough and meaningful understanding of the Student’s disabilities and their impact on his educational performance. His [REDACTED] teachers were able to identify *symptoms* of his emotional disorder and attention deficit disorder and knew that his primary eligibility was emotional disturbance. They noted sleepiness in class (head on desk, lying on desk), inappropriate noises, docility, apathy, lack of motivation, inability to complete work on time and distractibility. (Testimony of [REDACTED], [REDACTED], [REDACTED]). However, none of them seemed to know or understand the underlying disabilities that resulted in the manifestations even though they all agreed that he has an emotional disorder and attention deficits. This lack of knowledge and understanding is primarily to the School District’s failure to conduct an evaluation of the Student from the time he moved into the School District in 2007 until the present.

The 2007 school psychological evaluation conducted for the Student by [REDACTED] of the [REDACTED] Special Education District # [REDACTED] is the only public school diagnostic evaluation of the Student in the record. This evaluation was conducted before the Student moved to the School District. (Joint Exhibit 1). Dr. [REDACTED]’s evaluation of the Student in March and April, 2015, (Parent’s Exhibit 39) and [REDACTED]’s report of his private counseling sessions with the Student since October, 2014 (Parent’s Exhibit 37) are the only other professional assessments of the Student’s social and emotional development in the record. In addition, the absence of a social developmental history for this Student is of major significance.

Dr. [REDACTED] was a credible witness with respect to the Student’s social emotional development, and his findings on the Student’s cognitive ability and academic achievement are remarkably consistent with the 2007 evaluation. I find that his evaluation and testimony significantly clarified the Student’s diagnostic profile. The Cross-examination by School District’s counsel and testimony by [REDACTED] Special Education Coordinator [REDACTED] about Dr. [REDACTED]’s use of outdated versions of the WAIS and WRAT notwithstanding, Dr. [REDACTED]’s findings with respect to the Student’s cognitive abilities

were consistent with Ms. [REDACTED]'s 2007 findings: The Student functions at a well below average level as evidenced by consistent low to mid-80s standard scores, placing him in the lower 15<sup>th</sup> percentile. (Testimony of Dr. [REDACTED]). His findings concerning the Student's very low achievement in math are consistent with the low standardized test scores, but these conflict with the testimony of several teachers (see, e.g., testimony of Ms. [REDACTED] and [REDACTED]) who estimated his math abilities at a higher level.

Dr. [REDACTED]'s analysis of the Student's behaviors and performance in school is credible. He found that the Student has a great deal of anxiety and anger and keeps it inside. He is afraid of failure and of being thought of as "mentally retarded". He has some depression/sadness, but also some optimism and control. According to Dr. [REDACTED], school is difficult for the student and creates anxiety and stress. He is easily overwhelmed and frustrated by schoolwork. Dr. [REDACTED]'s explanation of how these social emotional factors contribute to the Student's school performance was plausible and was not refuted by any witnesses presented by the School District.

I find, consistent with Dr. [REDACTED]'s evaluation, that the Student has needed individual counseling and school social work services on a regular basis since January 20, 2013, and continues to need them as related services in order to make educational progress and a successful transition from high school to adult life. I further find that he did not receive any counseling or school social work services until the Mother secured the private services of Mr. Monken in October, 2014. In addition, [REDACTED] at [REDACTED] has been providing school social work services to the Student since February, 2015. (Testimony of [REDACTED]).

In regard to the Student's attention deficits, Dr. [REDACTED] testified that the Student needs the material to be given to him in small amounts, extended time and more space and control. (Testimony of Dr. [REDACTED]). These types of accommodations are common for students with attention deficits and are found to be appropriate for the Student. There is evidence that modifications were used at [REDACTED] by Ms. [REDACTED] (Testimony Ms. [REDACTED]). It is not clear, however, that they were used consistently for the Student at [REDACTED].

As for the October 7, 2014, marijuana incident and the MDR, Dr. [REDACTED] and [REDACTED] testified that the Student's conduct was a manifestation of the disability because it demonstrated his lack of judgment and a manifestation of his inability to think about the consequences of his behavior. According to Dr. [REDACTED], the Student was "self-medicating" to deal with stress and anxiety related to school. Mr. [REDACTED], the Student's private therapist, pointed to the Student's poor ability to process information and to understand the consequences of his conduct and his tendency to engage in some high-risk behaviors. Because of the decision herein regarding the propriety of the MDR, it is unnecessary to make a finding on whether or not the October 7, 2014, incident is a manifestation of his disability.

Academically, the level of this Student's achievement is unclear. His IEPs state that he can do grade level work and his teachers testified that he is capable of grade level work. (Testimony of [REDACTED], [REDACTED]). However, with the exception of Science, he

scored very poorly in the Explore test in 2012 (Parent's Exhibit 78). On the AIMSweb given during the current school year at Cornerstone, he scored well below average in Math computation and below average in Math concepts and applications. (District's Exhibit 24). On the SRI college and career readiness assessment he scored in the 11<sup>th</sup> percentile in November, 2014 and in the 5<sup>th</sup> percentile in March, 2015. (District's Exhibits 21 and 22). I question the reliance on standardized tests as a measure of his achievement, rather than on day-to-day classroom performance (see, Testimony of [REDACTED]). However, the conflict between his standardized scores and teacher testimony leads me to conclude that further testing is needed to determine this Student's academic performance levels, especially in reading and math.

### NEED TO CONDUCT A RE-EVALUATION

The School District did not conduct a re-evaluation of the Student at any time after he entered the School District in 2007. The most recent evaluation before Dr. [REDACTED] was the school psychological evaluation by Ms. [REDACTED] when the Student lived in the [REDACTED] school district. Re-evaluations were considered and determined to be unnecessary in 2010 and 2013. According to [REDACTED], the school psychologist for Mid-State Special Education assigned to the School District, the need for re-evaluations is made on a case-by-case basis. Students who transfer into the School District are not automatically re-evaluated. (Testimony of [REDACTED]). Ms. [REDACTED] testified that the 2007 evaluation was considered accurate and that no evaluation was recommended because the Student was not suspected of having a learning disability. She noted that the teachers did not recommend a re-evaluation.

The following information was available to [REDACTED] and [REDACTED] staff as they considered whether to recommend a re-evaluation of the Student in 2013. Nevertheless, Mother was asked to sign a waiver of the re-evaluation and she did (Joint Exhibits 11, 12, 13).

- (1) In the first semester of the Student's freshman year (2011-12) he was failing 4 general education courses and receiving a D in Math. (Joint Exhibit 28);
- (2) He was removed from general education math and science classes effective October 24, 2011, due to lack of behavioral and academic success (District Exhibit 3);
- (3) During the 2011-12 school year the Student had 22 disciplinary incidents reported (Parent's Exhibit #26);
- (4) Between August 27, 2012 and October 31, 2012, he was written up 23 times for disciplinary incidents (Parent's Exhibit #17 pp. 41-42);
- (5) In February, 2012, the Student took the Explore Test and his scores were as follows: Composite: bottom 1% in US, bottom 2% in his school; English: bottom 1% in US and in his school; Math: bottom 1% in US, bottom 3% in his school; Reading: bottom 5% in US, bottom 2% in his school; Science: bottom 31% in the US, bottom 28% in his school. (Parent's Exhibit 78);

(6) His special education teacher at ██████ from October 2011 forward, ██████, testified that the Student seemed depressed, needed motivation, slept in class, laid on the desk, made noises, would poke other students, had off-task behaviors and definitely had attention deficits. She added that it was not a matter of whether he could do his work, but whether he would do it. Like Ms. ██████, she stated that the Student was not re-evaluated because he was not suspected of having a learning disability.

(7) The Student's responses on transition self-assessments should have raised some concerns about his social emotional development. For example, at age 14 he completed the Ansell-Casey Like Skills Assessment and indicated that it was not like him to get help if his feelings bother him. He also indicated that it was not like him to explain how he is feeling. Further, he stated that it was not like him to talk with an adult he feels close to, and that it was not like him to find a compromise when he disagrees with someone. (Joint Exhibit 27, p. 154).

Given these facts, and given that the School District had never conducted an evaluation of this Student, and that he had not been evaluated since 2007, and that a social developmental history had never been conducted even though the Student's eligibility is based on an emotional disorder, I find that the School District should have conducted an evaluation of the Student in 2013.

#### IEPs

The Student's IEPs in the record are dated April 4, 2012 (Joint Exhibit 14), March 27, 2013 (Joint Exhibit 15), March 25, 2014 (Joint Exhibit 16), October 20, 2014 (Joint Exhibit 23), and February 23, 2015 (Joint Exhibit 26). The IEP of March 25, 2014, was in effect when the Student was expelled on October 15, 2014. The last two IEPs were written after the Student was removed from ██████. The IEP of April 4, 2012 is outside the Statute of Limitations, but it helps to put subsequent IEPs into context.

The IEP of April 4, 2012, was written when the Student was finishing his freshman year at ██████. It stated that the Student is capable of doing grade level work, but there was no information provided to support this statement. The present levels of performance section of the IEP stated that he has "significant social, emotional, and behavior" that interfere with his educational performance. It noted that in a class with more than 7 or 8 students he was "easily distracted by others and quick to join in with inappropriate behaviors." Further, it mentioned bothering his peers, making inappropriate sounds, being "ill-prepared", and sleeping in class instead of taking notes and doing his work. According to this IEP, he did not always recognize authority figures or understand their responsibilities, and blamed others for his mistakes, poor choices, lack of sleep, and lack of materials. (Joint Exhibit 14, p. 21). His goals were to be quiet and stay on task, attend class with all needed materials and completed assignments, participate appropriately in all school activities, recognize adult authority figures, and take responsibility for his own actions. The present levels of performance lacked baseline information necessary to write goals, and, consequently, the goal statements were not stated in measurable terms so that

progress could be monitored and recorded. Student had a behavior intervention plan (BIP) and a classroom aide, but no counseling services were not provided and there were no academic goals. The classroom aide's role is unclear. The participants in this meeting did not include anyone qualified to analyze or make recommendations on social emotional or behavioral issues such as a school social worker, school counselor or school psychologist. (Joint Exhibit 14, p..20).

In the IEP of March 27, 2013, the present levels of performance were essentially the same as in the previous IEP except that the statement about recognizing authority figures or understanding their responsibilities was removed without an explanation. He continued to have goals for staying on-task, taking notes, and doing homework. Three transition goals were added to this IEP without changing the present levels of performance or referencing any baseline data: to acquire skills needed to attend a 4-year college, to complete a series of activities to transition to competitive employment, and demonstrate skills needed to monitor his spending and saving. This IEP includes a BIP, but again no counseling was provided. The meeting participants again did not include any school support personnel.

The IEP of March 25, 2014, was in operation in October, 2014, when the disciplinary action was taken that resulted in the Student's removal from [REDACTED]. It was substantially the same as the previous IEPs in regard to present levels of performance as it continued to cite "significant social, emotional and behavior" impacting educational performance. (Joint Exhibit 16, p. 62). Participants did not include any school support personnel (Joint Exhibit 16, p. 61). (The name of [REDACTED] the [REDACTED] coordinator who holds an ISBE endorsement in school psychology, appears typed on the participant list, but he testified that he first learned of the Student after the October 7, 2015, incident.) The goal regarding on-task behavior and not engaging in distracting behavior was modified somewhat to include a 45-minute on-task measurement, but it was substantially similar to previous IEPs and it is not clear how the 45-minute target was identified. A goal was added regarding preparation for independent living, and the 4-year university goal was modified to add a technical school or community college. These goals are not stated in measureable terms and they are not based on any cited assessment data showing the Student's present levels of performance in these areas that would allow for the development of measureable goals.

On October 20, 2014, an IEP meeting was held following the decision to expel the Student from [REDACTED] (Joint Exhibit 23) The purpose of this meeting was to determine a 45-day alternative educational setting for the Student and to implement the October 15, 2014, Stay of Expulsion Agreement. A [REDACTED] school social worker, [REDACTED], participated in this meeting as did Ms. [REDACTED], the [REDACTED] Principal, who testified that she holds a masters degree in school social work. (Joint Exhibit 23, p.91). The present levels of performance were substantially the same as in previous IEPs regarding social, emotional and behavioral needs, off-task behavior, distractibility, and lack of motivation. (Joint Exhibit 23, p. 92). Goals were not stated in measureable terms and were identical or very similar to goals in previous IEPs. His interest in auto mechanics

was noted on a separate meeting note page (Joint Exhibit 23, p. 107). It was determined at this meeting that his alternative educational placement would be [REDACTED]

The February 23, 2015, IEP (Joint Exhibit 26) was ordered by this hearing officer. Attorneys for the Mother and Student participated and so did [REDACTED]'s clinician, [REDACTED], a school social worker and LCSW in Illinois. [REDACTED], the [REDACTED] school social worker, and [REDACTED], a [REDACTED] school counselor, also attended this meeting. This IEP's present levels of performance contain far greater detail about his disability and its impact on educational performance. (Joint Exhibit 26, p. 113). The goals and benchmarks are better than in previous IEPs, but still had shortcomings with respect to measurability. The BIP (Joint Exhibit 26, p. 131) is much more detailed than BIPs in previous IEPs and clearly uses the strategies of positive reinforcement and redirection. Counseling for 20 minutes per week with Ms. [REDACTED] also was commenced after this IEP was written. (Testimony of [REDACTED]).

#### Transition Goals and Services

The record does not include a comprehensive individualized vocational assessment for the Student or an assessment of his independent living skills and community living skills. The IEPs since 2013 contain pages that focus on transition, but they lack measureable individualized goals or plans. The record does include some self-assessments and interest inventories. (Joint Exhibit 27). It is clear from a number of witnesses that he enjoys hands-on work and prefers the field of automotive mechanics. (See, e.g., Testimony of Mother [REDACTED], and [REDACTED]).

While the Student was at the [REDACTED] Vocational Program ([REDACTED]) during his junior year, he had [REDACTED] as a teacher. Mr. Walton noted a lack of motivation and drive at first. The Student needed extended time on tests and had tests read to him. His performance improved as he shifted from classes to hands-on work in the repair shop. Praising him was helpful and he found satisfaction in the second semester as he completed his shop work.

The Student was removed from his participation at [REDACTED] when he was expelled. An automotive mechanics class is not offered at [REDACTED]. He has been provided access to the [REDACTED] computerized auto mechanics program that was purchased for the Student's use. He can complete the course at his own pace and work on it at home. (Testimony of [REDACTED]). He will receive high school credit for [REDACTED] when he completes it. Mr. [REDACTED] has been his transition coordinator at [REDACTED]. The Student has participated in a variety of transition-related activities at [REDACTED] with Mr. [REDACTED].

Going forward, as the Student pursues his goal of a career in automotive mechanics, he will need to access disability services in a four-year or community college. He will need a section 504 plan that provides accommodations such as frequent breaks, extended time, and one-on-one assistance. (Testimony of [REDACTED]). He will also need to master

basic math skills such as measurements, weights, and ratios. (Testimony of [REDACTED]). He will continue to need individual counseling. (Testimony of Dr. [REDACTED]).

There was testimony that the Student will be ready to enter a community college level program at end of the current school year. (Testimony of [REDACTED]). However, it is not clear from the record that this is the case and I find that certain evaluations and assessments are needed to determine his current proficiency levels and to plan his next steps.

#### FBA and BIPs

The FBA was conducted for the Student by Ms. [REDACTED] address sleeping in class. (Joint Exhibit 14, pp. 37-38; Testimony of [REDACTED]). The Student was never referred to the school social worker concerning his behaviors (Testimony of [REDACTED]). The FBA did not address the lack of respect for authority figures or lying across the desk. (Testimony of [REDACTED]). In her testimony Ms. [REDACTED] did not mention any training or education she had in behavior analysis or behavior management. Mid-State school social worker [REDACTED], school psychologist [REDACTED] and the [REDACTED] school counselor were available to conduct an FBA and to devise a BIP for the Student, but they were not asked to do so. PBIS was used generally in the high school and was implemented by Ms. [REDACTED] in her classroom. (Testimony of Ms. [REDACTED]). However, the IEPs for this Student do not indicate how PBIS was used on an individualized basis for his inappropriate behavior.

#### MANIFESTATION DETERMINATION REVIEW ON OCTOBER 10, 2014

A written notice of the MDR was not provided to the Mother. There is no written notice to the Mother of the MDR in the record. Mother was notified of the MDR by a phone call from Ms. [REDACTED]. (Testimony of Mother). From the testimony of the Mother and Stepfather I find that they did not fully understand the purpose and potential consequences of the MDR. Counsel for the School District is correct that the lack of written notice of the MDR was not raised specifically as an issue in the complaint. However, the issue of whether the MDR was appropriate was raised as an issue in the due process complaint notice and, therefore, the lack of written notice can be considered as part of this decision.

The participants in the MDR were: Mother, Stepfather, Student, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. From their testimony, only [REDACTED], Mother and Stepfather had any direct knowledge of the Student's disability. However, I find that their understanding of the Student's disability at that time was incomplete due to the School District's failure to appropriately evaluate the Student. (Parent's Exhibit 19, p. 45; Testimony of Mother and Stepfather). Mr. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED] had not had any direct involvement with Student before the MDR meeting. (Testimony of [REDACTED], [REDACTED] and [REDACTED]), although Ms. [REDACTED] had led the review process in 2013 to determine whether a re-evaluation of the Student was needed. The testimony of Mr. [REDACTED], the [REDACTED] Principal,

and Ms. [REDACTED], the [REDACTED] Assistant Principal, clearly indicated that they knew little, if anything, about the Student's disability.

### MOTHER'S EVALUATION REQUESTS

On October 15, 2014, at the expulsion hearing before the School District board, Mother read a written statement to the board in which she pointed out that the last psychological evaluation of the Student had been in 2007. (Parent's Exhibit 19, p. 45). She also stated that "we believe that further investigation, review, guidance and support is needed in this case". (Parent's Exhibit 19, p. 48).

On October 17, 2014, the Mother submitted a Mediation Request Form to the State Board of Education and on the form stated that she "would like an independent evaluation performed". (Parent's Exhibit 18). On the form the School District contact is given as [REDACTED], the District Superintendent. Mr. [REDACTED]'s phone and email contact information appears on the form. Mr. [REDACTED] testified that he did not recall receiving this document and that, if he did, it would have been filed by his administrative assistant and a copy would have been sent to [REDACTED], the [REDACTED] Coordinator. Mr. [REDACTED] testified that he did not receive the document. Since a mediator was assigned by the State Board of Education and the School District and Mother participated in the Mediation (Parent's Exhibit 15), I find that the written request for an independent educational evaluation was submitted to the Superintendent at some point in time during the Mediation process.

On January 20, 2015, the Mother, through her attorneys, filed a request for a due process hearing by letter to Superintendent Well. In her proposed resolution of her due process complaint notice she asked for an independent evaluation including psychological and social emotional assessments. She also requested an independent vocational assessment.

The School District took no action on the Mother's requests for an independent evaluation in the Mediation Request Form or in the due process hearing complaint notice.

At the February 23, 2015, IEP meeting, the Mother requested a full case study evaluation to determine the current educational needs of the Student. (Joint Exhibit 26, p. 113). The School District took no action on this request.

### [REDACTED] PLACEMENT AND SERVICES

According to the testimony of the [REDACTED] staff, the Student has shown some improvement in his academic performance, attitude toward school and behaviors. His most significant problem at [REDACTED] is completing work on time. (See testimony of Ms. [REDACTED], Mr. [REDACTED], Ms. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED].) This can be attributed in part to the level of individualized attention he is receiving at a therapeutic day school and clear and consistent behavior supports and intervention. It is also due in part to his participation in regular individual counseling sessions with Mr. [REDACTED] and the twenty minutes per week of school social work services he receives from Ms. [REDACTED].

On the down side, he has not been able to take a hands-on automotive mechanics class at ██████████, has missed out on high school senior activities at ██████████ and is commuting forty to forty-five minutes each way to attend ██████████.

## **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.

### **Free Appropriate Public Education**

A local educational agency is responsible for providing a student with a disability a free, appropriate public education (FAPE). 20 U.S.C. 1412(a)(1), 1413(a)(1). A FAPE consists of specialized instruction and related services that are individually designed to provide educational benefit to the student with a disability. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034(1982). To offer FAPE the student's IEP "must respond to all significant facets of the student's disability, both academic and behavioral". *Alex R. ex rel. Beth R. v. Forrestville Valley Community Unit School District No. 221*, 375 F.3d 603 (7<sup>th</sup> Cir. 2004).

Under the Illinois School Code, in a special education due process hearing the school district is required to present evidence that the special education needs of the student have been appropriately identified and that the program and related services proposed to meet the needs of the student are adequate, appropriate and available. 105 ILCS 5/14-8.02a(g-55).

In this case, the Mother has proven by a preponderance of the evidence that from January 20, 2013, forward the School District did not provide FAPE, except for the suspension and 45 day placement of the Student in an alternative educational placement beginning in October, 2014, when he came to school under the influence of marijuana. 20 U.S.C. 1415(k). The School District has not met its burden of production under 105 ILCS 5/14-8.02a(g-55).

First, the student has never been appropriately evaluated. School districts cannot appropriately address problems they do not understand. *Bd. of Educ. of Oak Park & River Forest High Sch. Dist. No. 200 v. Illinois State Board of Education*, 21 F.Supp.2d 862, 870(N.D. Ill. 1998). Evaluations must assess the student in all areas related to the suspected disability including social emotional and academic performance. 34 C.F.R. 300.304(c)(4). The evaluation of the student must be sufficiently comprehensive to identify all of the child's special education and related services needs. 34 C.F.R. 300.304(c)(6).

The only diagnostic evaluation in the record prior to Dr. [REDACTED]'s independent psychological evaluation in 2015 is the 2007 school psychological evaluation by [REDACTED] of the [REDACTED] Special Education District when the Student was 9 years old. His ongoing behavioral, social emotional, academic and attention difficulties, combined with his failing grades in regular education classes and removal from those classes in October of 2011, and numerous disciplinary incident reports in 2011-12 and in the fall of 2012, strongly signaled a need to re-evaluate the Student to determine his special education and related services needs. These signals were disregarded because the Student was not suspected of having a learning disability. (Testimony of Ms. [REDACTED] and Ms. [REDACTED]). However, this is not a legitimate reason for failing to evaluate this Student.

A social developmental history should have been completed for the Student. The social developmental history looks at a child's adaptive behavior, cultural background and family history. It is usually completed by a school social worker, but a school psychologist or a school counselor may complete the study. 23 Ill. Adm. Code 226.840. Had a social developmental history been appropriately completed for the Student, the significant historical factors identified by Dr. [REDACTED] such as the abandonment by his biological father during his infancy, the family history of chemical dependence, the suicide of his ex-girlfriend in 2013, and the recent death due to overdose of a cousin to whom he was close would have been known to the IEP team as it considered the special education and related services he needed. The social developmental history would have also provided staff with greater insight into his social emotional functioning and his in-school conduct, attitude and perceived lack of motivation.

Next, the School District failed to provide the Student FAPE since January 20, 2013, because its IEPs did not address his educational and related services needs. This was mainly due to the lack of an appropriate comprehensive evaluation. This Student has had significant social emotional, adaptive behavior and attention problems for a long time. He needed counseling services on a regular basis either by a school social worker, school counselor, or another qualified behavioral health professional. (Testimony of Dr. [REDACTED]), but did not receive it. The IEPs did not provide any school social work and/or counseling services or supports. In fact, no school social worker, school psychologist or school counselor even participated in IEP meetings convened for the Student while he was in high school until after he was expelled on October 15, 2014.

The IEPs from March 27, 2013, through October 20, 2014, deny FAPE because they have no academic goals despite the fact that he appears to have had some difficulty with math computation and reading comprehension. The School District, Student, Mother and any educational institution he attends in the future need to have a better idea of how he functions in these areas. His career preference is auto mechanics and, as [REDACTED] teacher [REDACTED] stated in his testimony, some math and reading proficiency is needed in that field. The testimony about his academic achievement and abilities seems to conflict with his very low scores on the AIMSweb, Explore and SRI. Therefore, a comprehensive evaluation of his academic achievement, particularly in math and reading, is warranted.

The Student was also denied FAPE because the content of his IEPs from March 27, 2013, forward failed to meet the requirements of IDEA. Again, this stems mainly from the lack of an appropriate and comprehensive evaluation. First, the present levels of performance did not describe his academic achievement and functional performance from which measurable annual goals could be written. They merely described manifestations of his emotional disability and attention deficit disorder (e.g., lack of motivation, not on task, makes noises, does not respect authority figures) without stating specifically how they affected his involvement and progress in the general education curriculum. It logically follows that the annual goal statements were not measurable because the present levels of performance did not provide the baseline of information necessary to write individualized measurable goal statements. See, 34 C.F.R. 300.320(a). *James v. Bd. of Ed. of Aptakis-Tripp Comm. Consol. Sch. Dist. No. 102*, 642 F.Supp. 2d 804 (N.D. Ill. 2009), provides a good example of how present levels of performance that are referenced to an objective measure of achievement for a child lead to the development of individualized and measurable goals and objectives for the child. Unfortunately, in the instant case the lack of baseline information for the Student led to poorly written present levels of performance, which, in turn, meant that annual goal statements could not be written appropriately. This directly affected the services that were or were not provided and the ability to monitor his progress.

A FAPE for the Student must include an appropriate and individualized transition plan. 34 C.F.R. 300.43; 105 ILCS 5/14-8.03. The transition plan must address academic and functional achievement. 105 ILCS 5/14-8.03(a). The School District's current transition plan denies FAPE because it lacks specific measurable and individualized transition goals and benchmarks, and is based mainly on transition inventories completed by the Student, and supplemented in the past several months by [REDACTED] teacher observations such as those of Mr. [REDACTED]. Although there is testimony in the record that he is ready to move on to a community college program, there is no comprehensive assessment of his vocational skills, independent living skills or community skills in the record. In addition, as noted above, it is not clear whether he has the academic skills, particularly in reading and math, and the social emotional skills necessary to successfully participate at the community college, technical school or four-year college level. He has a strong interest in auto mechanics and prefers hands-on work to classroom study. These assessments and subsequent transition plans need to take his personal career preferences into consideration. *Kevin T. v. Elmhurst Comm. Sch. Dist. No. 205*, 36 IDELR 153 (N.D. Ill. 2002).

The Mother has also raised the issue of the appropriateness of the School District's Functional Behavioral Analysis (FBA) and Behavioral Intervention Plan (BIP) for the Student. The FBA and a BIP will be important components of a transition plan for the Student if he continues to have behavior problems in an educational or another setting in which he is learning a skill or trade. The School District's FBA and BIP were deficient in that the FBA was not conducted, and the BIP was not developed by a school-based or outside professional with training and expertise in behavior analysis and management. Had a school social worker, school counselor or school psychologist conducted the FBA and helped to develop the BIP, and participated in the Student's IEP meetings, the FBA and BIP would have been more individualized and appropriate for the Student. However,

these tasks were left to Ms. [REDACTED], a special education teacher whose hands were already full carrying out her responsibilities of teaching academic courses to students with disabilities and implementing IEPs. Ms. [REDACTED]'s testimony also did not indicate that she has training and expertise in behavior analysis or behavior management. Therefore, it is not a surprise that the FBA and BIP developed for the Student failed to appropriately address all of his behavioral needs.

### **The Manifestation Determination Review**

The Manifestation Determination Review held on October 10, 2014, was inappropriate and therefore invalid. First, the Mother was not provided with prior written notice of the MDR meeting. Notification of the meeting was given by phone by Ms. [REDACTED]. The testimony by Ms. [REDACTED], the Mother and the Stepfather is inconclusive as to what they were actually told in advance of the meeting regarding its purpose and the possible consequences of the meeting. However, because a MDR decision that the conduct was not a manifestation of the child's disability was likely to and, in fact, did result in a change of the Student's educational placement, the parents were entitled to prior written notice that complied with 34 C.F.R. 300.503(a) and (b). The School District may very well have been trying to accommodate the Stepfather's work schedule by setting the meeting for October 10, 2014, and the Mother may have agreed to the date. (Testimony of [REDACTED] and [REDACTED]). However, that did not relieve the School District of its obligation under the law to provide proper prior written notice. *Community Consolidated School District #93 v. John F.*, 33 IDELR 210 (N.D. Ill. 2000).

Even if proper written notice had been provided to the Mother, the Mother's complaint about the composition of the MDR team is meritorious. The MDR team was made up of individuals that, other than Ms. [REDACTED], the Mother and Stepfather, hardly knew anything about the Student and his disability. The only formal evaluation available to the MDR participants was the 2007 school psychological evaluation that was almost eight years old. His emotional disorder had not been appropriately evaluated and understood, even by the Mother and Stepfather, until the Student started to see Mr. [REDACTED] and Dr. [REDACTED] evaluated the Student in March and April, 2015. In order to make a determination of whether the conduct in question was caused by, or had a direct and substantial relationship to the Student's disability, the MDR team needed to have a more meaningful and comprehensive understanding of the Student and his disabilities. 34 C.F.R. 300.530(e).

Because I have determined that the MDR was inappropriate and invalid for the reasons stated above, there will be no ruling on the issue of whether the conduct of the Student on October 7, 2014, was a manifestation of his disabilities. In addition, the question of whether the Stay of Expulsion Agreement is valid moot since the Agreement is premised on the MDR decision and the expulsion of the Student, which are rescinded.

### **The Mother's Request for Evaluations**

Since the incident of October 7, 2014, the Mother requested a re-evaluation of her son and has also requested an independent educational evaluation at public expense (IEE).

The first request for an evaluation was made verbally at the expulsion hearing on October 15, 2014. The second was made at the February 23, 2015, IEP meeting. No action was taken by the School District on either request.

She asked for an IEE in her Mediation Request Form of October 17, 2014, and in her due process hearing request on January 20, 2015. No action was taken on either of these requests.

The responsibility of the School District with respect to parental requests for evaluations is found at 34 C.F.R. 502(b)(2). The District failed to comply with these provisions.

### **Reimbursement for IEE**

Mother should be awarded reimbursement of the costs of Dr. [REDACTED]'s independent psychological evaluation. First, as noted above, the School District did not respond to the Parent's requests for a re-evaluation or an IEE, and she proceeded to obtain Dr. [REDACTED]'s evaluation at her expense. *See, Jefferson Cnty. Bd. of Educ. v. Lolita S.*, 977 F.Supp.2d 1091, 1103(N.D. Ala. 2013). Second, Dr. [REDACTED]'s evaluation provided valuable information regarding the Student's social emotional needs, adaptive behavior and family history. The School District had every opportunity to conduct its own evaluation of the Student, had clear signals that an evaluation was needed, and failed to conduct one.

### **Compensatory Education**

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.2d 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(3<sup>rd</sup> 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.

Using the qualitative approach favored by our District Courts, taking into consideration the services the Student has been receiving at [REDACTED] since October, 2014, and the fact that the School District had the authority to remove the Student and place him in an alternative educational setting for 45 days under 20 U.S.C. 1415(k)(1)(G)(ii) after he was removed from [REDACTED] in October, 2014, the Student is entitled to an award of compensatory services that he would have received had he been provided FAPE, as follows: (1) An evaluation of his math and reading comprehension skills; (2) The

completion of a social developmental history by a person qualified under Illinois law and regulations, (3) An assessment of his vocational skills and interests, his independent living skills and his community living skills to assist in the development of measureable and individualized transition goals; (4) math and reading instruction and/or tutoring with measureable goals and benchmarks as recommended by the math and reading comprehension evaluation; (5) Continuation of his IDEA eligibility for transition services at least through the 2015-2016 school year; (6) individual counseling services; (7) a functional behavioral analysis by a school social worker, school psychologist or independent professional trained in behavior analysis and behavior management, and a behavior intervention plan developed by the person or persons who conduct the FBA and tailored to the educational or other settings the Student will be in next year; and (8) enrollment in an automotive mechanics course during the summer of 2015.

### **Commencement Ceremony**

Mother has requested as part of this Order that the School District be directed to allow the Student to participate in the commencement ceremony on May 16, 2015, if it is determined that the MDR was inappropriate and the Student's expulsion is rescinded. I agree with the School District that this relief is unavailable to the Student for two reasons. First, participation in the high school commencement ceremony was not an issue raised in the Mother's due process hearing request. The subject matter of a due process hearing may not include an issue not raised in the due process complaint notice filed by the party requesting the hearing unless the other party otherwise agrees. 20 U.S.C. 1415(f)(3)(B). Clearly, the School District did not agree to the inclusion of this issue in the hearing. In addition, such a directive is outside the scope of the hearing officer's authority unless participation in commencement exercises is part of the Student's FAPE, IEP or educational placement. *Bd. of Educ. of Arlington Heights Sch. Dist. No. 25 v. Ill. State Bd. of Educ.*, 2001 U.S. Dist. LEXIS 6994 (N.D. Ill. 2001); *Jefferson County Bd. of Educ. v. S.B.*, 788 F.Supp.2d 1347, 1351 (N.D. Ala. 2011). Although I agree with Dr. that the Student's participation in the graduation ceremony would be desirable and beneficial, there is no basis upon which to conclude that the Student's participation in the commencement ceremony is part of his FAPE or his educational placement and it is not mentioned in any of his IEPs.

### **ORDER**

It is hereby ordered as follows:

1. The Student's expulsion of October 15, 2014, is rescinded due to an inappropriate Manifestation Determination Review on October 10, 2014.
2. Within 30 days of the date of this Order the School District shall reimburse the Mother for the cost of the independent psychological evaluation of Dr. in the amount of \$2,100.00 (Parent's Exhibit 39, p. 167).
3. The Student's eligibility under IDEA shall be extended

through the 2015-2016 school year, and whether the Student's eligibility should continue beyond the 2015-2016 school year shall be determined by the IEP team at an annual review meeting in 2016.

4. Within 30 days of the date of this Order the School District shall schedule independent assessments of the Student's vocational, independent living and community skills at the School District's expense. The assessments shall determine the Student's present levels of performance in objective and measureable terms, and this baseline information shall be used in addition to other available information to develop measureable transition goals and benchmarks.
5. Within 30 days of the date of this Order the School District's school psychologist or a qualified independent evaluator at the School District's expense shall conduct a comprehensive evaluation of the Student's math and reading comprehension skills. The evaluation shall determine the Student's levels of mastery and achievement in math and reading comprehension for the purpose of determining present levels of performance in order to write measureable goals and benchmarks for the 2015-2016 school year and to recommend appropriate services for the Student in reading and math.
6. Within 30 days of the date of this Order, the School District shall complete a social developmental history of the Student by a individual qualified under 23 Ill. Adm. Code 226.840.
7. In administering the new assessments and evaluations, appropriate and individualized modifications and accommodations shall be made for the Student's attention deficit disorder in consultation with the Student, his Mother, his counselor, Dr. [REDACTED], and teachers and school support personnel from [REDACTED], [REDACTED] and [REDACTED].
8. Starting on June 1, 2015, through the end of the 2015-2016 school year, the School District shall pay for two sixty-minute private individual counseling sessions per month for the Student to address his social emotional and adaptive behavior problems. The Mother and Student shall have the option of continuing to have Mr. [REDACTED] provide these counseling services, or agreeing with the School District on a new behavioral healthcare professional to provide the services. The School District's financial responsibility for the individual counseling sessions shall terminate prior to the end of the 2015-2016 school year if the counselor determines that the Student's counseling objectives have been met and the counselor recommends that counseling is no longer appropriate for the Student, or the if the counseling is discontinued by the counselor due to lack of cooperation by the Student.
9. The School District shall allow the Student to enroll in a summer automotive mechanics course, if available, at the School District's expense either at a local community college, the [REDACTED] Vocational Center or another location within a

reasonable distance from his home at the School District's expense. The Student's participation in the course is conditioned upon his compliance with applicable rules and policies, including health and safety requirements. The School District's transition coordinator or a transition specialist shall assist the Mother and Student in locating a class upon request.

10. Either a school psychologist, a school social worker, or both, and a transition specialist or transition coordinator shall be part of the Student's IEP team commencing with the date of this Order.
11. Within 10 days after the completion of the vocational and independent living skills assessments and the math and reading evaluations, the School District shall convene a meeting of the IEP team, which for this meeting shall include the individuals conducting the new assessments and evaluations, to develop a transition IEP for the Student for 2015-2016. The transition IEP shall contain individualized and measurable goals and benchmarks that logically flow from the present levels of performance derived from the recommendations of the new assessments and evaluations, information from [REDACTED] staff, input of the Mother, Student and counselor, and other relevant information available for the Student. The transition IEP shall include individualized modifications and accommodations to address the Student's attention deficits consistently across all settings in which the Student will be placed or engaged in activities during the 2015-2016 school year. If the IEP team determines that a behavior intervention plan (BIP) is appropriate for the Student in one or more settings, the BIP shall be based on a functional behavioral analysis (FBA) conducted by an individual who is trained and experienced in behavioral analysis and interventions such as a school social worker or school psychologist.

Pursuant to 105 ILCS 5/14-8.02a(h), the District shall submit evidence of compliance with this Order to the Illinois State Board of Education no later than 60 days after the date of receipt of this 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: May 14, 2015

*/s/ Philip C. Milsk*

Philip C. Milsk, 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 counsel and parties of record by certified mail on May 15, 2015:

[REDACTED]

/s/ Philip C. Misk  
Philip C. Misk