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ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

OCT 01 2015

SPECIAL EDUCATION
SERVICES

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| <p>██████████ Student,</p> |) | |
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| |) | |
| |) | Case No. 2015-0466 |
| |) | |
| v. |) | Sabrina Wilkins-Brown |
| |) | Impartial Hearing Officer |
| |) | |
| ██ |) | |
| |) | |
| School District. |) | |
| |) | |

FINAL DETERMINATION AND ORDER

JURISDICTION

The undersigned Hearing Officer was appointed to hear this matter and 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.

Procedural Background

On May 17, 2015, the Parents, at the time pro se, filed an initial due process complaint, requesting the appointment of an impartial due process hearing officer. The description of the dispute and relief in the due process complaint referred to an attached State Complaint previously filed by the Parents on March 18, 2015.

On June 1, 2015, the District filed a motion to dismiss the Parent's May 17, 2015 due process complaint arguing res judicata and insufficiency of the complaint. The District was

represented by the law firm of [REDACTED] in the persons of Ms. [REDACTED] and Ms. [REDACTED].

On June 2, 2015 this Hearing Officer was appointed as the Impartial Due Process Hearing Officer ("DPHO"), after substitution of the previously assigned DPHO. In addition, on June 2, 2015, Mr. [REDACTED] filed his appearance on behalf of the Parents and filed a response to the District's motion to dismiss on the basis of insufficiency.

On June 7, 2015, this Hearing Officer issued an Order on the District's motion to dismiss. The Order denied the motion on the basis of res judicata and granted the motion on the basis on sufficiency and granted leave for the Parents to file an amended due process complaint (See Order dated June 7, 2015)

On June 12, 2015, an initial telephone status conference was held with the Parties. Receipt of the Parents' June 12, 2015 amended due process complaint which raised new issues [and restarted the IDEA timeline] was acknowledged. Later the same day, the Parties filed a joint motion to continue the prehearing conference until after the resolution meeting could be held.

On June 16, 2015, this Hearing Officer issued an Order granting the parties' joint motion to continue the prehearing conference. (See Order dated June 16, 2015).

On June 22, 2015, the District filed its response to the amended due process complaint.

On June 24, 2015, a resolution meeting was held but did not result in an agreement between the Parties.

On July 2, 2015, the Parents filed a Motion in Limine regarding evidence related to FAPE violations allegedly committed by the District.

On July 8, 2015, the District filed a response to the Parents' Motion in Limine. On the same date, the Parents filed combined motions [and memoranda of law in support of the motions] to compel the production of educational records and for sanctions against the District for the alleged spoliation of evidence.

On July 9, 2015, the District acknowledged receipt of the Parent's combined motion to compel and for sanctions and requested additional time to respond to the combined motion.

On July 10, 2015, the Parents filed a Reply in Support of the Motion in Limine, replying to the District's response to that motion.

On July 12, 2015, this Hearing Officer issued an Order granting the District's request for time to respond to the Parent's combined motions. (See Order dated July 12, 2015)

On July 17, 2015, a telephone status conference was held with the parties. An evidentiary hearing was scheduled for the pending motions and the Parties jointly filed a motion for continuance of the prehearing conference.

On July 19, 2015, this Hearing Officer issued an Order of Continuance of the Prehearing Conference. (See Order dated July 19, 2015).

On July 21, 2015, an evidentiary hearing was held via telephone with the Parties regarding issues raised by the Parents' motion in limine and combined motions to compel and for sanctions.

On July 23, 2015, this Hearing Officer issued a decision and order on the Parents' pending motions. (See Order dated July 23, 2015).

On July 24, 2015, a prehearing conference was held with the Parties, which among other matters, identified the issues to be resolved at the due process hearing. (See Prehearing Report and Order dated July 31, 2015).

On August 14, 2015, the District, by and through its attorney, filed a Verified Statement regarding the District's production of student school records.

On August 19, 2015, this Hearing Officer issued an Amended Prehearing Report and Order to include an additional relief. (See Order dated August 19, 2015).

Hearing Summary

The due process hearing was held over seven (7) days (August 13, 14, 17, 18, 19 and September 15, 17 2015). Both parties were represented by counsel.

On August 13, 2015, on the record and by agreement of the Parties, the relief requested by the Parents was amended to include reimbursement for the cost of the Student's vocational evaluation conducted by Mr. [REDACTED] and paid for by the Student's current school district.

At the conclusion of the hearing, the parties were advised that a written decision would be rendered within 10 days. This decision is issued as required by Illinois law pursuant to 105 ILCS 5/14-8.02a (g-55)(5). Since the tenth day is a Sunday, pursuant to Illinois Statute on Statutes, 5 ILCS 70/1.11 the decision is due the following business day, which is Monday September 28, 2015. No written transcript of the hearing was produced for this Hearing Officer. Therefore, references in this decision to witness hearing testimony is based on the undersigned's tape recording (tr) and written notes. In rendering this decision, unless otherwise noted, this Hearing Officer has considered all exhibits admitted into evidence as identified in the attached Hearing Exhibit List and witness testimony.

As the appointed Hearing Officer, I had the inherent authority to control the course of the due process hearing to ensure an effective, efficient and timely hearing. *See Letter to Armstrong*, 28 IDELR 303 (OSEP 1997) It is well established that a hearing officer has the authority to grant whatever relief he [she] deems necessary, under the particular facts and circumstances of each

case, to ensure that a child receives the free and appropriate public education (FAPE) to which the child is entitled. See *Sch Comm of Burlington v Dept of Education*, 471 U.S. 359 (1985) (holding that IDEA empowers courts [and hearing officers] with broad authority to fashion appropriate relief, considering equitable factors, which will effectuate the purposes of IDEA). This broad authority includes procedural and evidentiary matters, provided that any decision made by the hearing officer is consistent with basic elements of due process hearings and the rights of the parties set out in the statute and regulations. See *Davis v Kanawha City Bd of Educ.*, 53 IDELR 225, 2009 WL 4730804 (S.D.W.V. Dec. 4. 2009) (finding that the hearing officer did not abuse his [her] discretion by denying the parents' request for a continuance).

ISSUES¹

Following are the issues and remedies identified by the Parties during the prehearing conference and agreed upon during the hearing:

- A. Whether the District violated Child Find by not conducting an appropriate evaluation to determine what special education and related services would be appropriate given the nature and extent of the Student's educational needs.
- B. Whether the District developed an appropriate IEP that was responsive to the Student's needs, including transition services.
- C. Whether the District provided the Parents with prior written notices before implementing, refusing to initiate or changing the Student's IEP or evaluations pursuant to 34 C.F.R. 300.503; 23 Ill. Adm. Cde. Sec. 226.520

RELIEF

- A. **Reimbursement** for the Occupational Therapy(OT) assessment; [REDACTED] (LMB) diagnostic evaluation; Quantitative Electroencephalogram;
- B. **Compensatory Education/Fund-** for Speech & Language services by a professional of the Parents' choosing; 200 hours of LMB tutoring to include [REDACTED] Program

¹ The Parents' issues do not specify time periods. Therefore, this Hearing Officer infers the relevant time period for the issues and relief raised in the Parents' June 12, 2015 amended due process complaint, originally filed on May 17, 2015, as the statutory limits period of the 2013-2014 and 2014-2015 school years. This encompasses the very end of the Student's sophomore school year, all of her junior school year and all of her senior year, as applicable.

and [REDACTED]
Program; Neurofeedback as co-therapy from a Neuro therapist of Parents choosing;
periodic testing until Student achieves a level commensurate to her potential language
and literacy skills. Payment of compensatory education to be made within 21 days of
presentation of invoices. Parents' coordination of the compensatory education.

C. **Reimbursement** to District [REDACTED], the Student's current school district for the costs of
the Student's vocational evaluation report conducted by [REDACTED]

The District seeks an order denying all requested parental relief and a finding the District
provided the Student with a FAPE.

BURDEN OF PROOF

The U.S. Supreme Court established in *Schaffer v. Weast*, 44 IDELR 150 (2005),
that the burden of persuasion in proving the effectiveness of a student's IEP is allocated to
the party challenging it. The Supreme Court's ruling requires that, in an administrative
hearing challenging the effectiveness of a student's IEP, the party challenging the IEP
must provide sufficient information to show it does not address the student's individual
needs adequately. *See also West Platte R-II Sch. Dist. v. Wilson*, 45 IDELR 88 (8th Cir.
2006). Here, the Parents are challenging the evaluations, and IEPs conducted by the
District and evaluations and have the burden of proof [i.e. by a preponderance of
evidence].

In Illinois, pursuant to 105 ILCS Sec. 14-8.02a (g), the District must provide
evidence that it properly identified and evaluated the nature and severity of the student's
suspected or identified disability and that, if the student has been or should have been
determined eligible for special education and related services, that it is providing or has
offered a free appropriate public education to the student in the least restrictive
environment. *Id.*

FINDINGS OF FACT²

After considering all the documentary evidence admitted into the record and the testimony of the witnesses, as well as the arguments of the parties, this Hearing Officer's Findings of Fact are as follows:

Background

The Student is an 18 year old female (DOB-2/15/97), currently attending high school at [REDACTED] High School District [REDACTED], [REDACTED], Illinois. The Student previously attended [REDACTED] high school in [REDACTED] School District [REDACTED] for her freshman (2011-2012), sophomore (2012-2013) and junior years (2013-2014). The Student withdrew from [REDACTED] high school during the fall of her senior (2014-2015) school year. At the time the Student withdrew from [REDACTED] high school in the fall of 2014, District records show she had earned 20.75 credits out of 21 required to graduate and had a 3.89 out 4.00 GPA with an ACT score of 20. (SDE, pgs. 469-471) In order to graduate from [REDACTED] high school, the Student only needed 1.0 credit of U.S. History and 1.0 credit of English, and the physical education requirement would be waived. While in attendance at [REDACTED] high school, the Student was enrolled in all general education classes with supports and services. Related services provided to the Student as reflected in the various IEPs for the relevant time period were counseling, occupational therapy, physical therapy and speech and language services. By all accounts, the Student was seen as very pleasant, very motivated and well-liked by her teachers and peers.

² Testimonial support for my findings are referenced by witness initials preceded by "tr" indicating the information is derived from this Hearing Officer's Tape Recording of witness testimony during the Hearing. Documentary support for my findings are to the Parties' exhibits and page numbers.

Medical Condition

The Student's medical condition, Posterior Fossa Syndrome (PFS) is a rare and extremely complicated condition. The Student's medical condition, also referred to as Cerebellar Cognitive Affective Syndrome ("CCAS"), is broadly defined as disturbances in the executive, linguistic and affective functions. (PE 1128).

The only medical doctor that testified at the hearing was the Student's pediatrician, Dr. [REDACTED]. Although admittedly not an expert in the field, Dr. [REDACTED] is familiar with the Student, who has been her patient since 2005, and knows how PFS or CCAS changed or affected the Student. (tr, SN) The Student's medical condition was reported as having wide spread ramifications, including slowed cognitive processing, reduced coping ability, depression, personality changes, irritability, lack of balance, affected speech and language. (tr-SN ;). Dr. [REDACTED] described the Student as having difficulty with balance (several falls), difficulty with processing, lack of muscle tone, inattention, decreased memory, apathy/immaturity and slowed speech. (tr-SN; PE 1130-1136). The District was made aware of the Student's medical condition by the Parents, the previous elementary school district and Dr. [REDACTED]. (tr, SN,) The Student has early onset of osteoporosis and is at high risk of falling due to her balance issues. Dr. [REDACTED] explained that because the Student lacks normal reflexes and reactions to prevent or minimize falls, any fall she may have could lead to more serious complications, such as a concussion, should she fall and hit her head. (tr, SN)

During Dr. [REDACTED]'s association with the Student, Dr. [REDACTED] felt the Student was always trying to do her best and did not rely on her medical condition as an excuse. (tr-SN, PE-p. 1138-1139) Due to the Student's fatigue issues, Dr. [REDACTED] provided the Student with medical excuses to be absent from school. Dr. [REDACTED] recommended specific accommodations to the

District that could assist the Student in dealing with her fatigue issues, such as door to door transportation services. (tr, SN, SDE 536) In addition, Dr. [REDACTED] felt that full occupational therapy and physical therapy for the Student would help combat her fatigue. (tr, SN). Dr. [REDACTED], however, never attended any of the Student's IEPs and never observed the Student outside her medical office setting. (tr, SN). Dr. [REDACTED] authored letters to the District regarding the Student's medical issues based on the Parent's (JM) concerns and requests. JM would outline the recommendations and accommodations for Dr. [REDACTED] to prepare a letter to the District. Dr. [REDACTED] used the parents' outline for guidance but drafted the letter based on what she felt comfortable recommending. (tr, SN, SDE, p. 139-141)

Dr. [REDACTED] never explained to anyone at the District what PFS or CCAS was in any detail but did explain in a letter what the symptoms were and felt what was written on the Student's school physical form was adequate. Dr. [REDACTED] recalls receiving at least one call from the District's nurse to confirm the Doctor had written a letter regarding the Student's accommodations. (tr, SN, SDE, p. 142) However, Dr. [REDACTED] never received a call from the District requesting any additional information regarding the Student's medical condition. Nor did Dr. [REDACTED] recommend any direct occupational therapy for the Student because she assumed the District would do its own assessment of the Student and not simply rely on her recommendations (tr, SN)

The [REDACTED] high school nurse, [REDACTED] assessed and treated the Student for stress and headaches. Ms. [REDACTED] recalled receiving instructions from Dr. [REDACTED] stating the Student should be allowed to remain in school for vomiting, where normally students would be sent home. (tr, LL) [REDACTED] recalled Dr. [REDACTED] being very thorough in her instructions and recommended accommodations for the Student. Some of the accommodations to address the

Student's fatigue issues included, door to door transportation from home to school and back, extra hallway passing time, an extra set of books (for home to avoid carrying heavy books back and forth) and the use of an elevator key. (tr, LL) [REDACTED] recalled speaking with Dr. [REDACTED] to clarify recommended accommodations but does not recall any conversations with the doctor regarding occupational or physical therapy for the Student. (tr, LL) [REDACTED] reviewed the Student's entire health report provided by the parent (JM) and personally observed the Student's levels of fatigue because she would come to the nurse's office to lay down or to get a permission slip to go home. The Student's early dismissals for medical reasons were not counted as absences and [REDACTED] never felt the Student was trying to avoid school work by leaving early.

Student Assessments/Evaluations³

3/21/13 – Psychoeducational Report prepared by [REDACTED] School Psychologist.

At the time of the report, the Student was experiencing attendance problems and there were some concerns that she had re-developed a brain tumor. This was the Student's (2012-2013) sophomore year. The report indicated the Student's struggles to get through the end of the school day with her attendance for the last two classes of the school day to be at 65%. The report also noted that family was following up with medical professionals regarding the Student's health condition. (tr. AM, SDE p.441) The Woodcock Johnson, Tests of Cognitive Abilities) III-3rd ed. Was administered. The Student's verbal abilities including her acquired knowledge and language comprehension were measured and scored within the *Average* range. The Student's Cognitive Efficiency (automatic cognitive processing) was measured to be within normal limits at the low end of *Average*. The Student's processing speed was an area of deficit.

³ Tests and IEPs referenced during the hearing and in this decision that are beyond the two year statutory period are included, if deemed relevant, for background or historical purposes and weighted accordingly.

The Student was administered the Woodcock-Johnson Tests of Achievement, 3d ed (WJIII ACH). The Student scores were an *Average range of 90-109*. The Student was administered the MEL CON for written and oral communication and was allowed: extended time, to ask questions and the choice to use her computer or write by hand. The Student's overall score was a 9, considered below that of her same grade peers who would expect to produce a score of 20-22.

The Student's writing was measured using both the My Access Writing Test and the AIMSweb. The Student's Readability grade equivalent was, 5.8, significantly below the expected level of achievement. AIMSweb is a curriculum based measurement tool that provides national normative data. The AIMSweb Written Expression CBM is a measure of a Student's ability to fluently write a story or set of ideas from a prompt. The Student's scores were Total Words Written – 18th %; Correct Writing Sequences- 23%; Words Spelled Correctly – 20%. All scores fell below the national norm of same grade peers.

The Report's Social Emotional Update indicated the Student was experiencing difficulties getting through the school day due to fatigue, headaches and body aches, which have been medically managed by the school nurse as necessary. (tr, AM, SDE, p. 444) The School Psychologist recommendations: the Student be included in a writing class that will provide direct instruction addressing deficits in written expression; continue to receive extended time to complete writing tasks; use of a graphic organizer or other pre-writing strategy to organize her work before producing a draft; use peer or teacher editing to refine her work and provide feedback before submitting writing assignments; social work services to develop problem solving skills related to the completion of work, transition counseling to help the Student explore

post-secondary goals and to consider how her accommodations and services may look in the post-secondary setting.

3/22/13 – Annual Review for OT/PT services. The focus of the review was to determine the Student's Independent Functioning and Use of Accommodations Survey. The review was simply a review of data and an interview with the Student. The review indicated the Student reported having no concerns with her accommodations simply referred to the Student's accommodations. (SDE, p. 430)

3/10/14- A speech and language assessment conducted by [REDACTED], the District's Speech Language Pathologist. (SDE 406-412) The reevaluation and assessment was made at the Parents' request to determine the Student's present levels of functioning. (p. 406) At the time, the Student was receiving speech therapy 20 minutes per week or 80 minutes per month as a minimum. Ms. [REDACTED] indicated that none of the Student's IEPs had more speech language therapy minutes. (tr, JS.) The goal of the services were to address the Student's speech processing, word retrieval skills and memory skills.

Prior assessments were reviewed as a baseline (1/2012), those performance scores reflected *average to high average* on the following administered tests: Comprehensive Assessment of Spoken Language (CASL); Test of Problem Solving, 2nd edition (TOPS -2); Test of Auditory Processing Skills. 3rd ed. (TAPS-3). The District's 2012 speech language assessment showed the Student at that time had speech and language deficits in the areas of processing speed and word retrieval. (SDE,p. 408)

An additional prior assessment was reviewed as a baseline (9/2012), and was conducted by [REDACTED] Hospital: Test of Language Competence (TLC) - Expanded Level 2). The Student scored *low average* on Figurative Language and Interpreting Intentions, *Borderline* on Oral

Expression (Recreating Speech Acts). All other scores were *average or moderate*. (SDE p. 407)

The results from [REDACTED] showed a mixed Expressive and Receptive Language Disorder, a Communication Disorder NOS and a Pragmatic Language Disorder.

The tests administered by Ms. [REDACTED] in March 2013 were TAPS-3, Auditory Attention, Phonologic Skills, Auditory Memory, Auditory Cohesion, Oral and Written Language Scales -2nd ed. (OWLS-2). The Student's scores were all *average*, with the exception of Word Memory, Memory, and Listening comprehension which were all *low average* and Oral Expression which was *high average*. Ms. [REDACTED]'s findings showed the Student achieved a 97 overall score with a percentile rank of 42, meaning the Student scored as well as or better than 42% of the same-aged students in the normative population. The noted areas of concern were the Student's Word Memory, indicating she had difficulty with retaining and manipulating simple sequences of auditory information and auditory memory.

Ms. [REDACTED] noted that without the ability to achieve success in these skills, it would be difficult for the Student to achieve the higher level language and processing comprehension and reasoning. (tr. JS, SDE, p. 411) The District's speech pathologist, [REDACTED], at that time, made the following concrete recommendations: direct intervention with a speech pathologist, instruction directed to address word retrieval across the curriculum, instruction on ambiguous meaning and forming complex sentences, self-advocacy training and social perspective training (Social Thinking), Retrieval accommodations, and technology accommodations, additional time on assessments and assignments, classroom notes, visual, verbal or graphic organizers and additional recommendations will be considered pending the IEP meeting discussions (SDE, p. 413).

3/10/14 – Psychoeducational Report, prepared by [REDACTED], School Psychologist.

The reasons for the report was to better determine the Student's academic accommodations and special education services. The tests administered were: Woodcock Johnson, Test of Achievement, Woodcock Johnson, Test of Cognitive Abilities, and Curriculum Based Assessment for Writing, Review of Educational Record. On the Educational Planning and Assessment System Test, growth shown from eighth grade to freshman year; decline from freshman year to sophomore year. (tr, AM. SDE, p. 434) A summary of the Student's scores are as follows: Intellectual Assessment: Woodcock Johnson –III of Cognitive Ability, the Student's General Intellectual Ability (GIA) score of 91 is with the Average range for students her same age.(the average range of functioning scores are 90-109) The Student's verbal abilities test scores were within the Low average range (expressive and receptive language development) lower than her last assessment in 2011. Phonetic Awareness and was found to be within the average range. Intentional Cognitive Processing is within the Average range. The Visual Auditory Learning is within the low average range (test requires visual and verbal memory and reasoning). The Student's MyAccess scores showed a lot of variation, however, the scores were a significant improvement, over the 2013 scores which measured a 5.8. The MyAccess writing skills were measured at 7.3. (SDE, p. 438) The AIMSweb Written Expression CBM is a measure of a Student's ability to fluently write a story or set of ideas from a prompt. The Student's scores were Total Words Written – 10th % (a decrease from a year ago); Correct Writing Sequences- 14%; Words Spelled Correctly – 12%. All scores were slightly lower than the 2013 battery of the same tests which fell below the national norm of same grade peers. The Recommendations were increased from prior year to include: tests read due to the Student's difficulties with visual/auditory learning (to increase understanding), team review of health reports to determine appropriate accommodations for health concerns, use of calculator to support math fluency,

continuation in the Extended American Literature course due to increased progress using MyAccess data, directions repeated due to her difficulties with auditory memory. (SDE, p. 439)

3/18/14- An Individualized Assessment Report; jointly prepared by [REDACTED], District Occupational Therapist (OT) and [REDACTED], District Physical Therapist (PT).

This assessment was a review of the last OT/PT evaluation of the Student performed in 2007, several years prior to the Student entering District 214. The report noted the Student's continuing right side weakness, decreased strength and endurance, balance and written communication deficits. (SDE, p. 426). The report determined that despite her limitations, the Student was able to display many functional skills. For example, the Report notes that "*ALM is able to demonstrate the ability to manage her school related papers, folders and laptop.*" Recommendations were made for ongoing strategies for both fine and gross motor tasks in order to participate in the educational environment. However, nowhere in the assessment report are concrete strategies presented. Instead the Report recites information contained in the 2007 evaluation and simply references the various accommodations being made by the District to address the Student's deficits. The Report includes a short written observation of the Student during her sophomore year (2012-2013) and a self-administered Survey, which indicated the Student scored in the Mastery Level for Motor Ability. (SDE, p. 427). The Report indicated the goals for 2014-2015 were to have the Student use assistive technology and mobility supports to assist her independent functioning within the school environment, and for the Student to self-determine whether there are supports that can be used more consistently due to her inconsistency in using her supports. (SDE, p. 429) Essentially the same report as used in the March, 22, 2013 Annual Review Report.

3/18/2014-Social Developmental Assessment prepared by [REDACTED], School Social Worker.

The assessment was completed as part of an evaluation to determine if there were additional services that could be provided to the Student. The Student self-described her weaknesses and strengths. Student strengths were indicated as: kind hearted, intelligent, self-motivated and driven, ability and desire to help others. Student weaknesses identified were: decision-making and judgment/choices, speaking calmly and making friends, easily frustrated, and driving ability, and being bossy.

Medical history indicated the Student continues to have ongoing health issues including high cholesterol, headaches, body pain and increased fatigue. The family dynamic is strained between mother and daughter, presumably due the Student's need to be more independent of mom. The Student's relationship with dad was described as better. The report also described some sibling relationship issues. (SDE, p. 448)

The report indicates the Student was experiencing more difficulty in the classroom setting, i.e concentrating, headaches and fatigue. JM expressed concern that the Student may not be getting the appropriate accommodations and supports this (2014-2015) school year. The report indicated the Student related she felt her needs were being met with exception of the January 2014 meeting re: the plagiarism incident. (tr, RG, SDE, p.449)

The Student was administered the Behavior Assessment System for Children (BASC-2) to formally assess the Student's adaptive behaviors and social emotional functioning. The BASC is a comprehensive measurement of both the adaptive and problem behaviors in the school setting. The BASC -2 scores found many "At-Risk" concerns as well as a "Clinically Significant" concern regarding Somatization. Stress is believed to play a significant role in the

Student's school success. (tr, RG, SDE, p. 453) A request was made by JM for more emotional support in the educational environment

Parent's 2015 evaluations- [REDACTED], Vocational Evaluation Report, OT/EEG Feedback

The parents produced evaluations from [REDACTED] (LMB) regarding the Student's learning potential evaluation (tr. AE, PE, p. 440-442). LMB works with students with learning disabilities from 2-6 hours to address underlying cognitive deficits in areas of learning and literacy skills. (tr., AE) Strategies used by LMB are: Concept imagery, ability dynamic imagery, dual coding theory aligned with direct relation between verbal and non-verbal codes for learning. Ms. [REDACTED] was qualified as an expert in the LMB learning processes. The Report was not prepared by Ms. [REDACTED] but as a regional manager and former center director she is familiar with the standardized tests used and the reports. (tr., AE, PE, p. 440-442). Ms. [REDACTED] reviewed the Student's files and a video and conducted a 30 minute observation of the Student. In her review of the records, Ms. [REDACTED] determined from the LMB evaluation report that the Student showed a weakness in symbol-imagery i.e. ability to take language that you hear or read and comprehend it. (tr., AE)

The Student demonstrated strength in written expression and adequate ability in Oral vocabulary, following oral directions, and word recognition. The Student showed difficulty in oral language comprehension and expression, reading recall of content detail, and reading comprehension. The Student's difficulty in processing language reflects sensory cognitive weakness in concept imagery. The Student also showed weakness in reading and spelling as indicated by performance on the word attack, spelling and contextual reading fluency. The LMB recommendations based on the evaluation results were as follows:

- Intervention to develop her language and literacy skills, daily instruction, 4 hours per day, 5 days per week for a total of 160-200 hours for 8-10 weeks; specifically the Seeing Stars Program and the Visualizing and Verbalizing for Language Comprehension and Thinking, with continuing evaluation and progress monitoring.

Vocational Evaluation Report

The parents had a Vocational Evaluation Report conducted by [REDACTED] and paid for by the Student's current school district [REDACTED]. The referral was to evaluate and assess the Student's vocational skills, interests and strengths and limitations for post-secondary training and potential employment. The test results highlighted the Student's assets and limitations. The tests administered were comprehensive and measured academic achievement, clerical, general skills assessment, dexterity, typing, work samples, customer service and career orientation placement. (tr, JB, PE, p. 452-463) The results and recommendation support the Student's ability to matriculate college level classes with appropriate accommodations and supports. (tr, JB) Use of on-line programs that offer step-by-step process for beginning career exploration, participate in Project Search Program to assist with interest in Allied Health field, on-site supervision and support, job shadowing and consultation with the Student's medical professionals regarding any physical concerns. (tr, JB, PE, 465-466)

OT/EEG Bio Feedback

[REDACTED] is a biofeedback therapist and occupational therapist. The witness was qualified as an expert in this field. The Beery VMI, a test of Visual Motor Integrations was administered. The test was to help identify the difficulties the Student has in integrating or coordinating her visual-perceptual and motor abilities.

The Student scored below average for her age in all groups. Visual discrimination was the greatest area of deficit, which is the ability to perceive position, shape, form, and color. It is the basic ability underlying a variety of visual perceptual tasks. (tr. LK, PE, p. 1214-122) The recommendations were as follows: direct occupational therapy services twice per week for one hour per session for three calendar years or until full function is attained. (tr. LK, pE, p. 1221) A physical therapy evaluation to evaluate the Student's asymmetry in muscle strength, balance and motor coordination; a Speech and Language evaluation to assess prgamatice language abilities; an Orthotic evaluation to provide increased stability and alignment. (tr. LK, PE, p. 1221-122)

Individual Evaluation Programs (IEPs)⁴

10/21/13- IEP- Reevaluation, IEP Review/Revision/ Transition.

The Parents and the Student were in attendance at this IEP. (tr. JM. GM, PE, 675-704)

Parents voiced concerns about the Student's performance on ACT Tests, the Student's continued language issues and Driver's Ed.(tr, JM, PE, 677) The Parent voiced concerns about the Student having flexible deadlines, study guides for exams and exams over more than 1 day. The parents produced a document to present to the District entitled The Educational Accommodations and Supports were essentially the same for the 2013-2014 IEP with a few additions: use of note cards for oral presentation with no time constraints, and additional time for changing clothes in PE (PE, 690)

The Secondary Transition Plan contained no assessment for training or independent living. (tr, JB, PE, 691) and the outcomes were vey general and contained no concrete strategies (tr., JB, PE, p. 691)

⁴ Due to the number of IEPs, and applicable amendments, the evaluations do not necessarily coincide with an IEP.

2/4/14 – Emergency IEP requested Parents. Parents voiced additional concerns that the Student's accommodations were not appropriately addressing the Student's deficits.

5/6/14, 5/12/14, 5/15/15 and 5/28/14- Student IEP and amendments. Parents and Student were in attendance and the IEP indicates it was based on the Student's March 18, 2014 evaluation. (SDE, p. 108) The amendments added the following accommodations: No essay questions, alternative seating for tests and Word bank for tests. (SDE, p.100-102)

8/27/14-(the most recent evaluation underlying this IEP as indicated on the form is March 18, 2014)

The indicated purpose of the meeting was to review existing data, i.e. domain for parent requested Independent Educational Evaluation. The form indicates the parents were in attendance together with the Student. (SDE, p.59) The Parents were provided their procedural safeguards on August 27, 2014 (SDE. 60) Two IEP team members were excused from attendance: [REDACTED], Associate Superintendent for Student Services and [REDACTED], English Teacher. (SDE, p. 64) The identified domains for IEE were: Academic Achievement – neuropsychological evaluation; Cognitive Functioning-neuropsychological evaluation; Communication Status – neuropsychological evaluation; Health –updated health information, Social-Emotional- psychiatric evaluation (SDE, p. 69-73).

Motor Abilities was not checked as a domain for IEE. It was noted that the last school based occupational and physical therapy evaluation was completed in September 2007. The notation reflects the Student present with decreased strength, endurance, balance and coordination for 2 handed tasks and production of written communication. It further indicates the

Student has right side weakness and has learned to use her left hand for writing or a hunt and peck method when keyboarding. It was acknowledged that the Student continued to show decreased motor abilities in the area of physical endurance and speed of written work production, yet concluded that the Student's ambulation was safe because she had an evacuation plan and was allowed extra passing time, referring to her accommodations. (SDE, p. 72-73)

The parties recorded the IEP meeting and the parent's advocate was in attendance. (SDE, p. 74). The IEP notes reflect the parents agreed to a psychological evaluation due to the increased stress the Student was experiencing. The Student indicated she wanted to continue attending Wheeling high school. (SDE, p. 74)

10/3/14- (At the time of the IEP meeting, Student was officially withdrawn from school.)

The meeting purpose reflected on the IEP was to review and/or develop the Student's IEP, determine educational placement and to consider post- secondary goals and transition plans. In addition the notes indicated the team would review the Student's anticipated graduation date and consider parental requests and concerns. (SDE, p. 32) Notes indicate the date of the most recent evaluation was March 18, 2014, however that date does not appear to coincide with any of the evaluations referred to in the hearing exhibits. Upon review of the data, the Speech/Language Assessment, appears to relate to the speech and language evaluation conducted by [REDACTED] on 3/10/14, as it references the scores and results contained in that evaluation. (SDE, p.6)

It is also noted that neither parent's signature appears on the sign in sheet as attendees at this IEP meeting. The Additional Notes section indicates the parents could not attend and reflects the attempts the District made to notify the parents of the meeting. (SDE, p. 32) The

document indicates that the procedural safeguards were provided to the parents on 9/22/14 and 10/3/14. (SDE, p. 5) submitted in the

Contentious Relationship between the Parents and District [REDACTED]

On 1/23/14 Ms. M was escorted to [REDACTED]'s office to discuss the District's allegation of the Student's plagiarism. Ms. [REDACTED] stated she did not know if the Student had intentionally tried to deceive with the plagiarism. This was the Student's second incident involving an allegation of plagiarism. (tr, AG). Ms. [REDACTED] described JM as becoming very upset and felt JM was verbally aggressive and irrational. (tr, AG) It was at this meeting that JM was told she would need to give 24-48 hours' notice before coming to school. An investigation into the allegation of the Student's plagiarism was conducted by the District. IEP team met to discuss 2nd plagiarism incident. The first incident of plagiarism was taken into account in investigation of the 2nd incident. The District looked at frequency, intensity and duration when investigating discipline. (tr, AG)

After the plagiarism incident, JM's behavior changed. Concerns about the Student's accommodations were made by parent (JM) who argued that was a contributing factor for the Student's alleged plagiarism incident(s). (tr, JM) During the investigation, District staff discussed how the Student's deficits may have contributed to the alleged plagiarism. (tr, AG) The investigation resulted in the plagiarism incident being removed from the Student's disciplinary record. (tr., AG, DS, AS) The Student was given a zero for the assignment and allowed to make it up (tr., AG) However, JM was very upset by the accusations and stated that the Student's IEP requirements were not being met.(tr, AG, JM)

As a result of the allegations of plagiarism and the Parent's perception that their daughter's deficits were not being properly accommodated, a lot of hostility and animosity festered between the family and the District.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of the Parties' counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The IDEA ensures that children with disabilities are provide with a free appropriate public education and related services that meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. Sec. 1400(d)(1)(A). To qualify for special education and related services, a child must have one or more of the statute's enumerated disabilities and because of that disability need special education and related service. 20 U.S.C. Sec. 1401(3)(A).).

In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982), the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirements of the IDEA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. *Id.* at 198-200. The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized

instruction and related services which are individually designed to provide educational benefit to the student. *Id.* at 201.

Whether the District developed an appropriate IEP that was responsive to the Student's needs, including transition services.

A hearing officer's determination of whether a child received FAPE must be based on substantive grounds. 34 C.F.R § 300.513. The determination of whether a school district has provided a student with FAPE is two-fold: 1) the school district must comply with the procedural requirements of IDEA, and 2) the school district must design and implement a program "... reasonably calculated to enable the child to receive educational benefits." *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175, 206-207 (1982).

There is no substantive standard set forth in the IDEA regarding the level of education to be provided, nor does the statute require that local educators must maximize the potential of disabled children or provide a guaranty of any particular outcome for the child. *King v. Board of Educ. of Allegany County*, 999 F. Supp. 750, 764 (D. Md. 1998).

To ascertain the educational benefits of an IEP, the reviewing entity must examine whether the student has received the "basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child." *Rowley*, 458 U.S. at 200-01. Although the school district need only provide "some educational benefit," the educational program must be meaningful. *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997) and *Houston Independent School District v. Bobby R. and Caius R.*, 200 F.3d 341, 347 (5th Cir. 2000). The educational benefit cannot be a mere modicum or de minimis. It must be likely to produce progress, not regression or trivial educational advancement.

In *Cypress-Fairbanks Independent School District v. Michael F.*, the Court set forth four factors that can aid in evaluating whether a student is receiving the "basic floor of opportunity, or access to specialized instruction and related services which are individually designed to provide educational benefit" to that student: 1) whether there is an individualized program based on the student's assessment and performance; 2) whether the individualized program is administered in the least restrictive environment ("LRE"); 3) whether the services are provided in a coordinated and collaborative manner by the key stakeholders; and 4) whether positive benefits are demonstrated both academically and non-academically.

Here, the evidence shows that the District did not adequately provide the Student with all necessary or related accommodations and services. The IEPs from year to year essentially did not change with respect to the identified accommodations for the Student. Particularly lacking is the virtually non-existent occupational and physical therapy component to address the Student's deficits. Each evaluation and IEP clearly identified the student's significant balance and dexterity issues, yet the OT and PT therapists thought it sufficient to only give consult hours instead of addressing that deficit with direct OT/PT services.

Likewise, the Student's goals and accommodations to address her reading and writing deficits were clearly deficient as they simply repeated the same accommodations from IEP to IEP without a true assessment of the Student's progress. For example, the Student's academic grades and GPA may have been on point for her to graduate, given the accommodations and related service which helped her to achieve in school. However, the complexities of this Student's medical condition warranted more than a mere cursory accommodation. For example in the 10/21/13 IEP meeting, the goals and objectives were not specific as to what skills would be involved. The stated goal provided that the Student utilize her accommodations, make

arrangements with the teacher and seek out her case manager on a regular basis. These goals and objectives were not only broad and general but did nothing to address her deficits or move her toward being independent.

Finally, the District dismally failed in providing and specific and appropriate transition goal for the Student given her identified deficits. As shown by the Parent's expert, there was clearly a need for assessment of the Student's vocational abilities given her interest and identification of specific steps to implement those goals.

Whether the District provided the Parents with prior written notices before implementing, refusing to initiate or changing the Student's IEP or evaluations pursuant to 34 C.F.R. 300.503; 23 Ill. Adm. Cde. Sec. 226.520.

A district must provide parents with prior written notice whenever it proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." 34 CFR 300.503 (a).

Prior written notice must include:

- A description of the action proposed or refused by the district.
- An explanation of why the district proposes or refuses to take the action.
- A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action.
- A statement that the parents have protection under Part B's procedural safeguards, and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
- Sources for parents to contact to obtain assistance in understanding the provisions of Part B.
- A description of other options that the IEP team considered and the reasons why those options were rejected.
- A description of other factors relevant to the district's proposal or refusal. 34 CFR 300.503 (b). *See also Letter to Atkins-Lieberman*, 56 IDELR 141 (OSEP 2010); and *Letter to Anonymous*, 59 IDELR 14 (OSEP 2012).

Verbal notice as a substitute for written notice does not fulfill the prior written notice requirements of the IDEA, regardless of whether the verbal notice is substantively proper. *Pikes*

Peak Bd. of Coop. Educ. Servs., 9 ECLPR 15 (SEA CO 2011); and *Union Sch. Dist. v. Smith*, 20 IDELR 987 (9th Cir. 1994), *cert. denied*, 109 LRP 36508 , 513 U.S. 965 (1994).

Written notice must provide sufficient detail to allow parents to participate in their child's educational services decisions in an informed way. *Smith v. Squillacote*, 19 IDELR 265 (D.D.C. 1992); and *Santa Rosa City High Sch. Dist.*, 38 IDELR 260 (SEA CA 2003). The more information a parent receives about the district's rationale in making a decision, the less likely parents are to object and file due process claims. *See Fern Ridge Sch. Dist. 28J*, 16 IDELR 676 (SEA OR 1990) (finding that the notice the parents received was deficient because it required them to read between the lines).

Procedural flaws do not automatically require a finding of a denial of a FAPE, but procedural violations that result in the loss of educational opportunity to the student or seriously infringe on the parent's opportunity to participate in the IEP process do result in the denial of a FAPE. *W.G.*, 960 F.2d at 1484; *see also Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990). In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

- 1) Impeded the child's right to a FAPE;
- 2) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
- 3) Caused a deprivation of educational benefit. (34 CFR 300.513(a)(2)) (20 U.S.C. 1415(f)(3)(E)(ii)).

The Supreme Court in *Rowley* recognized the importance of adherence to the procedural requirements of the IDEA. *Id.* at 205. Federal special education law requires states to establish and maintain certain procedural safeguards to ensure that each student with a disability receives

the FAPE to which he/she is entitled and that parents are involved in the formulation of the student's educational program. *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1483 (9th Cir. 1992).

The procedural rights that extend to parents include the right to be informed in writing when the educational agency proposes to initiate or change the identification, evaluation, or educational placement of the child; the right to participate in the development of the child's IEP; the right to examine all relevant educational records; and the opportunity for mediation and a due process hearing. 20 U.S.C. § 1415(b) (1997) (amending 20 U.S.C. § 1415(b)(1994)).

Here, based on the evidence presented at the hearing, it does not appear the District strictly adhered to the statutory guidelines regarding the seven criteria of providing PWN. There is evidence in the record that the Parents' were given and signed acknowledging receipt of the procedural safeguards notice. However, as the Parents correctly point out the procedural safeguards notice is not the same as PWN. However, the procedural violation is only actionable if: 1) it impeded the child's right to a FAPE; 2) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or 3) Caused a deprivation of educational benefit. (34 CFR 300.513(a)(2)) (20 U.S.C. 1415(f)(3)(E)(ii)). The Parents did not present sufficient evidence to show how the District's failure to provide PWN impeded or resulted in any deprivation of FAPE to the Student or caused a deprivation of benefit. The Parents were given notice of IEP conferences whether they attended or not. The parents were full participants and staunch advocates in pursuing their daughter's right to a free and appropriate public education. The parents were well informed and had been fully participating in special education for their daughter prior to her entering the District.

Further, it appears from the record, that with few exceptions it was the Parents who were the catalyst for change with respect to the Student's IEP, in particular when it came to the Student's accommodations. The record again, is replete with the parent's requests for amendments to existing IEPs to adjust, or add accommodations and services.

Whether the District violated Child Find by not conducting an appropriate evaluation to determine what special education and related services would be appropriate given the nature and extent of the Student's educational needs.

Each school district shall be responsible for actively seeking out and identifying all children from birth through age 21 within the district (and those parentally placed private school children for whom the district is responsible under 34 CFR 300.131) who may be eligible for special education and related services. 23 Ill. Adm Cde 226.100. An evaluation under the IDEA serves two purposes: identifying students who need specialized instruction and related services because of an IDEA-eligible disability; and helping IEP teams identify the special education and related services the student requires. 71 Fed. Reg. 46,548 (2006). *See, e.g., A.W. v. Middletown Area Sch. Dist., 115 LRP 4105* (M.D. Pa. 01/28/15) (holding that a student's evaluation was inappropriate because it lacked information from which the district could develop a positive behavior plan, craft IEP goals, or rule out a specific learning disability).

The IDEA distinguishes between initial (or preplacement) evaluations (34 CFR 300.301) and reevaluations of students who already are receiving special education and related services under the IDEA (34 CFR 300.303). The former refers to the first evaluation, while the latter refers to the follow-up or repeat evaluations that occur throughout the course of the student's educational career. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. 34 CFR 300.302.

Here, the fact that the District met its child find responsibilities pursuant to 23 Ill. Adm.Code § 226.100 is supported by the record. It is an undisputed fact that during the relevant time period, 2013-2015, the Student was identified by the District as eligible for special education services and in fact received special education services with supports and services throughout her attendance at [REDACTED] high school, much of which was specifically requested by the Parents or the Student's pediatrician. (tr-SN, PE-p.938, 925). In short, the record is replete with evidence documenting teachers and school officials' continual review of the Student's performance up to and even after the date of the Student's withdrawal from [REDACTED] high school. (tr.AG, DS, AS, SDE, pgs. 1-3, 4-405).

The Parents offered no credible evidence that the District violated its Child Find obligation. In order to demonstrate a child find violation, a parent must show that either: 1) the school officials overlooked clear signs of disability and were negligent in failing to order testing; or 2) there was no rational justification for deciding not to evaluate. *Board of Education of Fayette County, Kentucky v L.M.*, 47 IDELR 122, 478, F.3d 307 (6th Cir. 2007) Here, the Parents argue the District failed to make the connection between the Student's identified deficits and provide appropriate accommodations is a Child Find issue. I disagree. The issue of whether the accommodations and related services, based on the Student's known deficits were appropriate is not a Child Find issue as contemplated under IDEA. There is no question that the District's evaluations identified the Student as eligible for special education services and provided what they determined was appropriate to meet the Student's deficits. This is simply not a case where the school district shirked its responsibility in "identifying" a child in need of special education.

ORDER

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

The District failed to develop appropriate IEPs based on relevant evaluations as it relates to the Student's identified deficits related to reading and writing, balance, mobility and dexterity and transitional planning. Accordingly, the District is ordered within 30 days of the issuance of this Order:

The District shall reimburse School District [REDACTED] for the full cost of the Vocational Evaluation Report dated 6/22/15 in the amount of \$1200.00.

The District shall reimburse the Parents in the amount of \$4,256.00 for the [REDACTED] tutoring of the Student for 38 sessions, plus \$295.00 for the LMB evaluation for a total \$4551.00.

The District shall pay as and for compensatory education for the Student to LMB, the amount of \$8,960.00 for 80 sessions of tutoring for the [REDACTED] and [REDACTED] [REDACTED] Program.

The District shall pay as and for compensatory education for the Student for direct OT services to [REDACTED] for: \$410 for the OT evaluation dated 7/29/15; plus 1 OT session at \$155.00; plus 40 sessions of OT, twice per week for 1 hour at \$155 per hour for a total of \$6,200.

The District shall pay as and for compensatory education for the Student's PT evaluation in the amount of \$410.00 to [REDACTED]

The District is found not to have violated FAPE as it relates to Child Find or PWN.

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: September 28, 2015






/s/ Sabrina Wilkins-Brown
Impartial Hearing Officer

[REDACTED]
[REDACTED]
[REDACTED] p.
[REDACTED] f.
[REDACTED]

CERTIFICATE OF SERVICE






The undersigned hereby certifies that a true and correct copy of this Final Decision and Order was sent before 6:00 p.m. on September 28, 2015 by certified mail with return receipt to the following persons:

 Parents' Attorney





 District's Attorney





Mr. Andrew Eulass
Due Process Coordinator
Illinois State Board of Education
100 North First Street
Springfield, Illinois 62777-001

/s/ Sabrina Wilkins-Brown
Impartial Due Process Hearing Officer




 p.
 f.
