

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

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STUDENT<sup>1</sup>,

Student,

Case No: 2016-0135

v.

Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

  
School District.

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**FINAL DETERMINATION AND ORDER**

**JURISDICTION**

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

**BACKGROUND**

The Student is a 16-year-old, male who is a junior in high school. He qualifies for special education services under the disability categories of autism (AUT) and speech or language impairment (S/L), pursuant to eligibility and IEP meetings on December 18, 2012, December 13, 2013, and October 14, 2014. The Student was found to have educational needs in the areas of: processing delays in the areas of working memory, use of pragmatic language, and receptive and expressive language. The Student is enrolled in general education classes in Symphony Band, PE, English, Math, and U.S. History with modifications and supplementary

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

aides and services. He is enrolled in a self-contained special education classroom for two hundred forty (240) minutes per week. Parent disagreed with various services, IEP goals and accommodations created for the Student as listed in IEPs dated from December 18, 2012 through October 14, 2014 and further maintained that she was denied an opportunity to meaningfully participate at several IEP meetings, as required personnel were not present and her requests for additional meetings were ignored.

The Parent filed the Due Process Complaint Notice (DPCN) on September 29, 2015. (IHO Exhibit 1.) The District timely filed its Response to the DPCN on October 9, 2015. (IHO Exhibit 2.) The parties participated in mediation on October 27, 2015 but were unable to resolve any of the outstanding issues. (IHO Exhibit 6.) Based upon this, the 45-Day timeline for this Hearing Officer to render a decision began to run on October 30, 2015 and the initial 45-Day deadline was December 14, 2015. The Parties jointly requested a continuance of the 45-day deadline on November 2, 2015 in order to continue settlement discussions and to accommodate the agreed upon prehearing conference and due process hearing dates. (IHO Exhibit 7.) The continuance was granted pursuant to this Hearing Officer's order of November 2, 2015 for good cause shown and the 45-Day deadline was extended to February 21, 2016. (IHO Exhibit 7.)

On February 9, 2016 a status conference was held. At that time, this Hearing Officer requested further clarification and specification of the issues presented by Parent as Parent was not prepared to discuss and clarify the issues during the conference. Parent was granted additional time to file her clarification and specification of the issues and the District was granted time to respond. The parties jointly requested a continuance at that time. Said continuance was granted for good cause shown and the 45-day deadline was extended to March 31, 2016. (IHO Exhibit 15.)

On March 21, 2016, the prehearing conference was commenced but not completed. Therefore the parties again jointly requested a continuance to complete the prehearing conference, prepare for and hold the due process hearing on April 25 & 27 and May 3 & 4, and to provide the hearing officer with ten (10) days to render her decision. The 45-day deadline was extended to May 14, 2016. (IHO Exhibit 22.)

At a subsequent status conference on April 13, 2016, the parties advised that based upon documents received by Parent from the District, and the parties settlement discussions, that four (4) days would not be required for the due process hearing.<sup>2</sup> The parties jointly agreed to eliminate the April 25<sup>th</sup> and 27<sup>th</sup> hearing dates. (IHO Exhibit 28.)

Prior to the commencement of the Due Process Hearing, a statute of limitations issue was raised relating to the Parent's claim that the Student was denied FAPE when he was denied two sessions at 30 minutes per session of social work services from August 28, 2013 through September 30, 2013 pursuant to the December 18, 2012 IEP. This issue was resolved pursuant to this Hearing Officer's Order dated April 26, 2016. (IHO Exhibit 31.)

The Due Process Hearing was held on May 3 & 4, 2016. The Parent opted for a closed hearing. [REDACTED] represented the District. [REDACTED] were the District Representatives. [REDACTED] of the Law Offices of [REDACTED], represented the Parent. The parties presented joint witnesses.<sup>3</sup> The District presented the following Exhibits: District Exhibits 1-3, 8, 12, 16-17, 20-25, 29-34, 36-40 which were admitted into evidence. The

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<sup>2</sup> Parent filed several Motions requesting production of various documents. The parties were able to resolve all outstanding document production issues prior to the 5-Day Disclosure date. See IHO Exhibits.24, 25, 28.

<sup>3</sup> Joint Witnesses are listed in Exhibit A. The testimony of three witnesses was secured pursuant to subpoena. Prior to issuance of the subpoenas, this Hearing Officer determined that the testimony of these individuals was relevant to the issues certified for hearing. As the witnesses were all believed to be former District employees, it was determined that their testimony could not be secured without subpoenas.

Parent presented the following Exhibits: Parent pages 214-224, 293-295, 309-310, 331-332, 343-345, 349-350, 365, 371, 376-379, 396, 403 which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-36. Both parties submitted oral closing statements, with a written outline of their closing statement, and any case law relied upon.

### ISSUES

The issues raised by the Parent are as follows:

- (a) Whether the Student was denied FAPE when allegedly:
  - (1) the Student did not receive speech language consultative services, individual and group speech language therapy, and individual and group social work therapy of 5 weekly sessions at 30 minutes per session pursuant to the December 12, 2012 IEP.
  - (2) the Student did not receive transition services – Student consultation with classroom teachers, career counseling regarding career choices, and counseling regarding educational courses with his case manager – no transition services were provided to the Student as required by the December 18, 2012 IEP.
  - (3) the Student was not provided with co-taught special education and general education or small group instruction in math and language arts for the 2013-2014 school year and was not provided with co-taught or small group instructions in language arts during the 2014-2015 school year pursuant to the December 18, 2012, October 2, 2013, November 1, 2013, December 13, 2013 and October 14, 2014 IEPs.
  - (4) the Student was not provided with any of the following accommodations: test taking adaptations related to classroom, district, and state wide assessments; classroom modifications, chunking of data, calculator, peer tutoring, checks for understanding, open book and notes, program modifications, extended time to complete assignments and teacher support for assignment completion, separate room/quiet place for test taking and assignment completion, access to school social worker, social interaction and support for interaction with peers and school personnel pursuant to the December 12, 2012, December 13, 2013, and October 14, 2014 IEPs.
  - (5) the Student was denied a social work plan to address his need to identify cause and effect connections; to develop positive peer and staff interactions and relationships; to make inferences; to develop pragmatic language skills, processing skills and positive communication strategies;

to develop social interaction skills; to develop problem solving strategies for work completion and organization; to develop self-advocacy skills. The Student was denied a crisis plan which outlined appropriate steps for staff regarding the Student when behavioral incidents arose. The Student was denied a health plan to address his arrest, incarceration, and isolation from peers and a behavioral plan that addressed his need to develop coping skills when interacting with peers and staff, as a result of the Manifestation Determination Review, Interim Alternative Educational Setting and IEP completed on October 2, 2013.

- (6) the Student was not provided with one to one support in the areas of social work and speech language services at any time pursuant to the October 2, 2013, November 1, 2013, December 13, 2013 and October 14, 2014 IEPs.
- (7) the Student was not provided with accommodations in the form of extended time on state, nationally normed, and college entrance assessments, specifically the ACT, pursuant to the December 13, 2013 IEP.
- (8) the District did not increase the Student's social work minutes in December 2013 to address his psychological state. The Student required 30-60 minutes per week of social work instruction and therapy.

The Parent request that this Hearing Officer award compensatory education in the form of tutoring services in math and language arts, social work services, speech language services for three hours per week for the remainder of the Student's school attendance and ESY for Summer 2016 and 2017.<sup>4</sup>

The District maintains that at all times in question, the Student was provided with the required social work, speech language, transition services, accommodation, and academic instruction and support in math and language arts in accordance with the IEPs in effect at the time and was thus provided FAPE.

- (b) Whether the Student was denied FAPE when allegedly:
  - (1) required IEP team members were not present at the IEP meetings convened on October 2, 2013 – October 14, 2014, specifically the school social worker and transition coordinator, thus violating Parent's procedural rights as required by 34 CFR §300.321.
  - (2) Parent's requests for an IEP meeting in Spring 2015 to discuss the Student's lack of academic progress in math and reading, and lack of necessary accommodations were disregarded.

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<sup>4</sup> Parent further specified her request for compensatory education. See IHO Exhibit 35.

The Parent requests that this Hearing Officer order the District to convene an IEP meeting with the required IEP team members present, specifically the school social worker and transition coordinator, to discuss the Student's academic progress in math and reading and necessary accommodations.

The District maintains that at all times in question, required members of the IEP team were present and that Parent's procedural due process rights were not violated.

- (c) Whether the District failed to evaluate the Student in all areas of suspected disability, i.e. post-traumatic stress disorder (PTSD), specific learning disability, and emotional disability, when it did not perform a psychological evaluation in December 2013.
- (d) Whether the November 1, 2013 FBA and BIP adequately addressed the Student's educational needs, re: positive peer and adult interactions, self-advocacy skills, appropriate replacement behaviors, when classroom observations were not performed as required.
- (e) Whether the December 13, 2013 and October 14, 2014 IEPs failed to address the Student's educational needs in the area of pragmatics, determining solutions, problem-solving, social inferences and applying reasoning abilities in everyday solutions when it failed to adopt the speech pathologist's recommendations, create and implement goals based upon those recommendations, and increase the Student's speech language minutes to address said goals.

The Parent requests that this Hearing Officer order the District to perform a Psychological evaluation to evaluate the Student in all areas of suspected disability. The Parent further requests that this Hearing Officer order the District to perform an FBA which includes classroom observations as required and develop a BIP to address the Student's individual needs. The Parent also requests that this Hearing Officer order the District to convene an IEP meeting to consider the recommendations of its speech language pathologist, create goals to address the Student educational needs in the areas of pragmatics, determining solutions, problem-solving, social inferences and applying reasoning abilities in everyday solutions and to correspondingly increasing his speech language minutes to address said goals.

The District maintains that at all times in question, the Student was evaluated in all areas of suspected disability, the FBA and BIP adequately addressed the Student's needs, and the IEP team implemented all appropriate recommendations of the speech language pathologies in the December 13, 2013 and October 14, 2014 IEPs.

- (f) Whether the Student was denied FAPE when allegedly:
  - (1) the District failed to implement goal #3 in the December 18, 2012 IEP which provided that the Student recognize personal and academic needs to succeed and to seek out help when struggling with school work. The

requested specificity was not provided by the April 15<sup>th</sup> deadline, therefore, this issue is hereby dismissed.<sup>5</sup>

- (2) the District failed to implement the goal requiring that the Student receive assistance from both the general and special education teachers with reading comprehension and vocabulary as required by the December 18, 2012 IEP. The requested specificity was not provided by the April 15<sup>th</sup> deadline, therefore, this issue is hereby dismissed.<sup>6</sup>
- (3) the math goal contained in the December 13, 2013 IEP was not measurable or tracked and the Student's present levels of performance were not considered when developing the goal as required by 34 CFR §300.320(a)(1).
- (4) the speech language goal contained in the December 13, 2013 IEP failed to consider the Student's present levels of performance and did not provide a means for measuring the Student's progress.
- (5) the reading goal contained in the December 13, 2013 IEP failed to consider the Student's present levels of performance and did not provide a means for measuring the Student's progress.
- (6) the transition goal contained in the December 13, 2013 IEP was not tracked, provided no means to measure the Student's progress, and failed to consider the Student's present levels of performance.
- (7) the social work goal contained in the December 13, 2013 relating to the Student's abilities to interpret the subtleties of social situations was not measureable and the Student's progress was not monitored.
- (8) the math goal (goal #3) and reading goal (goal #6) contained in the October 14, 2014 IEP were not appropriate to enable the Student to make educational progress, were not measureable, and the Student's progress was not monitored.
- (9) the October 14, 2014 IEP failed to provide a social work goal to address the Student's needs regarding his abilities to interpret the subtleties of social situations.
- (10) the District failed to provide the Student with IEP goals to address his unique needs in the areas of attention, focus, executive functioning, and

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<sup>5</sup> See IHO Exhibit 26. Email to parties with Prehearing Report & Order requesting additional information from Parent's counsel. IHO advised that if the missing information was not received by the April 15, 2016, 5:00 p.m. deadline, the issue would be dismissed.

<sup>6</sup> See IHO Exhibit 26 and footnote 5 above.

poor communication skills with adults in the December 13, 2013, October 14, 2014, and September 26, 2015 IEPs.

The Parent requests that this Hearing Officer determine the Student's needs in the areas of social work, speech language, transition services, math, reading and language arts, if any, and order that the IEP be revised to address those needs. Parent further requests that this Hearing Officer award compensatory education in an amount commensurate with the finding of denial in the alleged areas.

The District maintains that, at all times in question the Student's IEP goals were appropriate and designed to ensure that he make adequate educational progress.

- (g) Whether the Student inflicted serious injury to warrant an Interim Alternative Educational Placement for eleven (11) days beginning on October 1, 2013 despite the District's determination that his actions were a manifestation of his disability.

The Parent requests that this Hearing Officer find that the Student did not inflict serious injury to warrant an IAES for eleven days. The District maintains that the Student did inflict serious injury and that the IAES placement was warranted.

The Parent request that this Hearing Officer award compensatory education in the form of social work services, one hour, speech language services, two 30 minute sessions, psychological services, three 45 minute sessions to address the Student's PTSD for the eleven (11) day period in which the Student was denied same.

### **FINDINGS OF FACT**

This Hearing Officer did not have the benefit of a transcript when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes, recording of the hearing, and recollection. This Hearing Officer carefully considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether or not specifically referred to or cited when making her final determination. After considering all the evidence, as well as the arguments of both District counsel and the Parent, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a 16-year-old, male who is a junior in high school. He qualifies for special education services under the disability categories of autism (AUT) and speech or

language impairment (S/L), pursuant to eligibility and IEP meetings on December 18, 2012, December 13, 2013, and October 14, 2014. (District Exhibits 1, 21, 30; Testimony of CM1, CM2, SEC.)

2. Currently, the Student is enrolled in general education classes in Symphony Band, PE, English, Math, and U.S. History with modifications and supplementary aides and services. He is enrolled in a self-contained special education classroom for two hundred forty (240) minutes per week. He receives thirty (30) minutes per week of speech language services and thirty (30) minutes per month of consultative social work services. (District Exhibit 36.)

3. The Student has received special education services and supports throughout his educational career. (District Exhibit 20.)

4. When the Student transitioned from 8<sup>th</sup> grade into 9<sup>th</sup> grade, he was enrolled in general education PE and Electives; general education English, Science, and Social Studies with modifications and supplementary aides and services; and special education math, in a self-contained special education classroom. He received thirty (30) minutes per week of speech language services. His December 12, 2012 IEP, which transitioned with him from 8<sup>th</sup> grade to 9<sup>th</sup> grade, did not provide for social work services. (District Exhibit 1; Testimony of SLP, CM1.)

5. The Student received the following supplementary aids and services: pacing and timing, test adaptations, social interaction support, presentation. He received the following program modifications: directions reviewed, chunked and clarified, small group instruction, use of a calculator, peer tutoring, extended time with support for assignments, redirections as needed to keep the Student on task, contact inclusion teacher if problems arise in class, make sure Student understands directions for assignments, access to school social worker (consultative) if

necessary. The Student also received specific testing accommodations and for state standardized assessments. (District Exhibit 1, 21, 30, 36; Testimony of CM1.)

6. TC<sup>7</sup> is the Student's Transition Coordinator and has been since his freshman year in high school. She writes transition plans for the Student taking into consideration his desires for future education and employment and his present levels of performance. The Student would like to be a musician. He would also like to be a cook. TC wrote a transition goal for the Student during his freshman year. The goal was related to employment. The Student was to attend transition workshops and complete 80% of the activities related to his career goal. He completed three (3) workshops. TC kept records reflecting the Student's test performance. She kept data charts and observation logs. She reported her data to the case manager to send to Mother on a quarterly basis. (Testimony of TC; District Exhibit 21.) TC also wrote a transition goal for the Student in his sophomore year related to future education and employment, given the Student's desires to be a musician or a cook. She worked with the Student on self-advocacy and monitoring his grades. The Student was able to perform both of those tasks. She collaborated with SLP and school social worker. (Testimony of TC; District Exhibit 30.)

7. This Hearing Officer finds the testimony of TC to be credible and persuasive. The Student received transition services as required by his December 18, 2012 IEP. The December 13, 2013 IEP transition goal considered the Student's present levels of performance, was tracked and provided a means to measure the Student's progress.

8. On September 30, 2013, the Student participated in a bomb threat at RTHS. He wrote a note indicating a detonation time. The Student admitted to writing a note which stated "bomb blows at 2." (District Exhibit 8; Testimony of Student, ST, Mother.)

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<sup>7</sup> TC holds a Master's Degree in Special Education with an LBS endorsement.

9. The Student wrote the bomb threat note during English class. On that date, a substitute teacher was present. She did not become aware of the note until the transition period during classes when a female student brought her the note. She did not know who had written the note. She feared for her own safety and the safety of everyone in the building. She immediately took action and reported the bomb threat. The school building was evacuated. (Testimony of ST.)

10. ST<sup>8</sup> did not know the Student, was unaware that he had an IEP, and did not provide him with accommodations. However, on the one day that she was in English class, the Students were working on a packet independently. The Student did not take any tests on that date. (Testimony of ST, GEE; District Exhibit 8.)

11. Subsequently, a Manifestation Determination Review was held on October 2, 2013. The MDR Team determined that the Student's actions were a result of his disability and his conduct was the direct result of the school district's failure to implement the Student's IEP as they did not receive the IEP until the week of September 23<sup>rd</sup>. (District Exhibit 8.). The MDR team conducted a Functional Behavioral Assessment (FBA) and implemented a Behavioral Intervention Plan (BIP). It was determined that the Student would be placed in an interim alternative educational setting for forty-five (45) school days. (District Exhibit 17.)

12. The Student was ultimately removed to the interim alternative educational setting, IAES, a self-contained special education school, for eleven (11) school days, from October 2, 2013 to October 17, 2013.

13. At the IAES, the Student received 1800 minutes per week of instruction in a self-contained special education school. He was placed in the following specific classes: English 9, Freshman Social Studies, Intro to Algebra, Biology, PE/Health, and an Elective. He received

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<sup>8</sup> ST holds a Bachelor's Degree in English and a Master's Degree in secondary education. She began working as a substitute teacher in 2012. She is now employed by the District full-time as a high school English teacher.

thirty (30) minutes per week of speech language services and seven (7) minutes per week of social work services. (District Exhibit 8; Testimony of PSY<sup>9</sup>.)

14. As a result of the MDR, the IEP Team determined that a re-evaluation of the Student was necessary. The Student was evaluated in the following domain areas: academic achievement, functional performance, cognitive functioning, communication status, social/emotional status. (District Exhibit 17.)

15. A Psychological Evaluation was performed on November 6, 8, 13, 20, and December 4, 2013 by PSY. PSY and his intern interviewed the Student, performed two classroom observations and administered academic achievement, functional performance and cognitive functioning assessments. (District Exhibit 20; Testimony of PSY.)

16. On the Wechsler Individual Achievement Test – 3<sup>rd</sup> Edition (WIAT-III), the Student scored in the average range indicating that he is able to be successful in the classroom. His numerical operations and math problem solving scores indicate that he could have more difficulty in math. (District Exhibit 20; Testimony of PSY.)

17. The Conners Comprehensive Behavior Rating Scale (CBRS) was also used. It was completed by the Student, Mother, a case manager/resource teacher and a general education teacher. Mother and the case manager were consistent in their evaluations of the Student with very elevated scores reported for social problems, academic difficulties, language and math scales. This indicated that the Student had difficulty handling social situations and also had some difficulties with reading, writing, and math. (District Exhibit 20; Testimony of PSY.)

18. The Wechsler Intelligence Scale for Children – 4<sup>th</sup> Edition (WISC-IV) was also administered. The Student scored “below average” in perceptual reasoning and full scale IQ. He

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<sup>9</sup> PSY was the school psychologist during the Student’s freshman year of high school. He holds a Master’s Degree in Psychology and was employed by the District for 15 years. He has 40 years of experience as a school psychologist.

scored “extremely low” in processing speed. The Student presents as a slow learner and requires additional time to complete tasks. He may require extra cues and directions to complete tasks in a timely manner. The most significant academic concerns were the Student’s mathematical skills as he may have difficulty solving math problems related to basic math skills, everyday applications, and higher order math. The Student has difficulty organizing information and successfully performing on timed tasks. Therefore, he requires additional time to complete tasks. He may also have difficulty developing and maintaining peer relationships due to his previous diagnosis of autism. (District Exhibit 20; Testimony of PSY.)

19. No evidence was presented at hearing to support Parent’s contention that the 2013 psychological evaluation failed to evaluate the Student in all areas of suspected disability.

20. This Hearing Officer finds that the District performed a psychological evaluation on November 6, 8, 13, 20, and December 4, 2013. The evaluation appropriately identified the Student’s needs in the areas of academic achievement, functional performance and cognitive functioning.

21. A Functional Behavioral Assessment (FBA) was developed on November 1, 2013 in response to the MDR. The Target Behavior was the Student’s compliance with a request from a peer, in an unsupervised setting, without full consideration of the consequences that may follow. This resulted from the Student’s difficulty in reading social situations directly related to his Autism Syndrome. A Behavioral Intervention Plan (BIP) was developed on November 21, 2013 to address the Target Behavior and to provide the Student with additional support in social interactions with peers. (District Exhibit 21.)

22. No evidence was presented at hearing to show that the FBA and BIP were inappropriate or that they did not adequately address the Student’s needs.

23. This Hearing Officer finds that the November 1, 2013 FBA and BIP were appropriate and adequately identified and addressed the Student's areas of need.

24. Mother was present at the IEP meetings held on November 1, 2013, December 13, 2013, and October 14, 2014. (District Exhibits 16, 23, 29.) Mother excused the presence of the school social worker at the November 1, 2013 IEP meeting, in writing. Mother understood that she was excusing the presence of this IEP Team member and did so voluntarily. (Testimony of Mother; District Exhibit 16.)

25. No evidence was presented that the transition coordinator was not present at the IEP meetings held on November 1, 2013, December 13, 2013, and October 14, 2014. (District Exhibits 16, 23, 29; Testimony of Mother; Testimony of TC.)

26. This Hearing Officer finds that the required IEP Team members were present at the IEP meetings convened on October 2, 2013 – October 14, 2014, specifically the transition coordinator. This Hearing Officer further finds that the school social worker was present, as required, at the IEP meetings convened on October 2, 2013 – October 14, 2014, with the exception of the November 1, 2013 IEP meeting, at which time Mother excused the social worker's presence in writing.

27. Mother requested a meeting with CM2 in April 2015 to discuss the Student's IEP and PARCC testing accommodations. CM2 responded to her via email requesting that she provide a brief description of the issues she wanted to meet about and he would attempt to resolve those issues. (Parent Exhibit Page 403; Testimony of CM2.)

28. No evidence was presented to show that Parent followed up on CM2's request for a brief description of the issues about which Parent was concerned.

29. This Hearing Officer finds that Parent's request for a meeting in Spring 2015 was not disregarded. Parent did not specifically request an IEP meeting and the District, specifically CM2, attempted to obtain additional information regarding Parent's issues in an effort to resolve them.

30. CM1<sup>10</sup> provided services to the Student in his freshman year of high school as his case manager and resource room teacher. She knew the Student was a special education student at beginning of school year as she receives a list of the students assigned to her caseload at the start of the school year. CM1 worked with the Student in biology class and social studies as a resource teacher providing push in and pull out services. (Testimony of CM1, GEB<sup>11</sup>.) At the beginning of the 2013-2014 school year and after the Student's IEP was revised in December 2013, she provided notifications to all of the Student's teachers advising them of the classroom accommodations he was to receive pursuant to his IEP. (Testimony of CM1, GEE<sup>12</sup>, GEB; Parent Exhibit P. 343-345.) CM1 provided the Student with the following accommodations: small group instruction, checks for understanding, chunking of information. She was in the classroom with him directly for biology and social studies to provide one on one support when needed. There was another certified teacher who provided services to the Student in the classroom for classes CM1 did not attend with the Student. CM1 had the Student's general education teachers submit lessons in advance so she could preview the information with the Student. CM1 had discussions with the Student's general education teachers regarding how they could chunk information to assist the Student in understanding it and provide graphic organizers.

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<sup>10</sup> CM1 holds a Bachelor's Degree in special education. She has thirty-two (32) years of experience as a special education teacher.

<sup>11</sup> GEB holds a Bachelor's Degree and Master's Degree in Curriculum Instruction. He had been an employee of the District for ten (10) years.

<sup>12</sup> GEE holds a Bachelor's Degree in English from [REDACTED] and Masters' Degrees in secondary education from [REDACTED] and [REDACTED]. She has been a high school English teacher in the District for nine (9) years.

CM1 ensured that the Student received small group instruction and made sure that his general education teachers checked for understanding and asked him questions to make sure he understood the material. (Testimony of CM1, GEE, GEB.)

31. CM1 provided resource room services to the Student during his freshman year of high school. When he came to her room for support, she worked with him on pragmatics, drawing conclusions, inferencing, and decision making. In English and social studies, she worked on inferencing throughout the year using his English and social studies books. In the resource room, the Student received extra time to complete assignments. CM1 worked collaboratively with SLP and the Student's general education teachers to provide support to the Student. CM1 also used multiple modalities of conveying information to the Student to ensure that he understood the information. (Testimony of CM1, GEE, GEB.) She also advised the Student's general education teachers of ways in which they could convey information using multiple modalities to ensure the Student's understanding. (Testimony of CM1, GEE, GEB.) CM1 prepared the Student's progress reports his freshman year of high school. The progress reports were sent home to parents quarterly by the school secretary. (Testimony of CM1; District Exhibit 25.)

32. During the Student's freshman year of high school, 2013-2014, he was placed in an instructional or special education math class as his skills were below grade level and he required additional support. (Testimony of CM1; District Exhibit 38.)

33. The high school kept a log of accommodations, extra supports, and issues regarding the Student. The log reflects accommodations, extra supports, and academic interventions provided to the Student. (Testimony of CM1; District Exhibit 40.)

34. GEB was the Student's freshman biology teacher. He knew the Student was a special education student and received a copy of the Student's IEP at the beginning of the school year. The Student was provided with the following accommodations in his biology class during the 2013-2014 school year: close proximity seating to the teacher, extra time to complete tests and assignments, graphic organizers, testing accommodations, including a quiet place outside of the classroom to complete tests. (Testimony of GEB.) He worked closely with CM1 to differentiate instruction for and provide different modalities to the Student. GEB tried to ensure that all of his students succeeded in his class. He would find alternate assignments to meet the Student's needs if he was having difficulty with an assignment. (Testimony of GEB.)

35. GEE was aware that the Student was a special education student. She received a copy of his IEP at the beginning of the school year. She worked closely with CM1 and another instructional aide, who was in her classroom, to provide services to the Student. The Student received weekly speech language services and was pulled out for those services during her class time. The Student was reading below grade level. GEE worked with the Student daily on his IEP reading goal. The goal was designed to assist the Student with reading, listening, and understanding passages and predicting outcomes. (District Exhibit 21.) When reading in class she teaches students to make educated guesses and inferences about the information they are reading. GEE provided results of the Student's success in meeting his goal via grades posted in Power School, the on-line grade reporting system to which teachers, students, and parents have access. She would record her observations and the Student's progress and provide the information to CM1. (Testimony of GEE, CM1; District Exhibit 21, 25.) The Student was very much a self-advocate and GEE spent considerable time working with him in freshman English and answering his questions. (Testimony of GEE.)

36. This Hearing Officer finds the testimony of CM1, GEE and GEB to be credible and persuasive. This Hearing Officer further finds that the Student was not provided with co-taught special education and general education classes in math and language arts for the 2013-2014 school year, as this was not required by his December 18, 2012, October 2, 2013, November 1, 2013, and December 13, 2013 IEPs. During his freshman year of high school, the Student was in a general education English class where he received additional supports from his general education English teacher, case manager/resource teacher and an instructional aide, including small group instruction, and modifications to the curriculum, as required by his IEPs. (FF #35.) This Hearing Officer further finds that the Student was placed in a self-contained special education classroom for math as his skills were below grade level and he required additional supports. (FF #32.)

37. This Hearing Officer finds that the Student's reading goal, contained in the December 13, 2013 IEP considered the Student's present levels of performance and provided a means for measuring the Student's progress. (FF #35.)

38. The Student did not register for and did not take the ACT test during his freshman or sophomore years in high school. (Testimony of Mother.)

39. This Hearing Officer finds that the Student was not denied the accommodations in the form of extended time on the ACT pursuant to the December 13, 2013 IEP, as did not register for or take the ACT test. (FF #38.)

40. The Student did not display any deficits when communicating with adults in the school setting. (Testimony of GEE, GEB, CM1, CM2, SLP.)

41. No evidence was presented to support Parent's contention that the Student had educational needs in the areas of attention, focus, and communication skills with adult school staff members.

42. This Hearing Officer finds that the District did not fail to provide the Student with IEP goals to address his unique needs in the areas of attention, focus, and poor communication skills with adults, as these were not areas of identified needs and Parent failed to produce any evidence to the contrary at hearing. (FF #40-41.)

43. This Hearing Officer finds that the District did provide the Student with accommodations and curriculum modifications in the form of graphic organizers, multi-modality information delivery, checks for understanding, chunking of information, extended time to complete tests and assignments in order to adequately address the Student's executive functioning deficits. (FF #5, 30-34.)

44. CM2<sup>13</sup> was the Student's case manager during his sophomore year of high school. He knew the Student well and knew him to be a very polite, dedicated, diligent, hard-working student. He was responsible for monitoring the Student's academic goals on the December 13, 2013 IEP, for the first three months of the 2014-2015 school year, and on the October 14, 2014 IEP. He monitored the Student's reading comprehension, written expression, and math calculation goals and the Student's progress toward those goals. He monitored the Student's class grades, assessments, anything in any class that related to reading comprehension, written expression and math calculation. He completed progress reports, reviewed assessments, talked to the Student's co-teacher in geometry, and provided extensive tutoring services to the Student. The Student's freshman year IEP goals were closed out at the annual review meeting because the

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<sup>13</sup> CM2 holds a Bachelor's Degree in Special Education and a Master's Degree in Administration and has an LBS credential. He has been employed by the District for three (3) years.

Student had either met those goals or the goals were deemed to no longer be appropriate.

(Testimony of CM2, District Exhibit 21, 25, 30-34.)

45. At the beginning of each semester, CM2 forwarded a list of the Student's accommodations, modifications and supports to all the Student's teachers to ensure that they were aware of them. CM2 followed up to ensure that the Student received the required accommodations and modifications. (Testimony of CM2; Parent Exhibit P. 309-310.)

46. The Student was placed in general education math, Geometry, at the beginning of his sophomore year. The Student struggled with Geometry and CM2 worked with the Student extensively. The Student came to CM2 regularly for tutoring services. He would re-take quizzes and tests with CM2 and CM2 went over the Student's class assignments with him until he understood the material and felt comfortable with it. CM2 documented his interventions. CM2 worked closely with the Student's general education math teacher. At the end of the first semester, the Student was still struggling with Geometry, therefore, CM2 recommended a change in placement for the Student to a co-taught general education/special education class. Parent was not supportive of this change as she wanted the Student placed in general education. (Testimony of CM2; District Exhibits 39-40.)

47. Based upon the credible and persuasive testimony of CM2, this Hearing Officer finds that the Student's math goal contained in the December 13, 2013 IEP was measurable, tracked, and considered the Student's present levels of performance. It is further found that the math and reading goals, contained in the October 14, 2014 IEP, were appropriate to ensure the Student made educational progress, were measurable, and progress was monitored. Parent failed to present any evidence to the contrary. (FF# 44-46.)

48. This Hearing Officer finds that the Student was not provided with co-taught special education and general education in language arts during the 2014-2015 school year, as it was not required by his October 14, 2014 IEP. He was provided with small group instruction in language arts. (District Exhibit 30.)

49. This Hearing Officer finds that, based upon the credible testimony of CM1 and CM2, the Student was provided with the accommodations required by the December 12, 2012, December 13, 2013, and October 14, 2014 IEPs, with the exception of his freshman English class on one day, September 30, 2013, when ST credibly testified that she was unaware the Student was a special education student and did not provide any accommodations.

50. This Hearing Officer finds that Parent failed to provide any evidence to support the allegation that the Student was entitled to and denied a social work plan, health plan, and crisis plan.

51. The Student's December 13, 2013 IEP provided for thirty (30) minutes of social work services to be delivered bi-monthly. The Student's October 14, 2014 IEP provided for thirty (30) minutes of consultative social work services to be delivered monthly. (District Exhibit 21, 30.)

52. SLP<sup>14</sup> is the speech language pathologist assigned to the Student. She has provided speech language services to the Student for the past three (3) years of high school. She began working with the Student during the second week of his freshman year. She was aware of the Student's IEP accommodations and provided information to all of the Student's teachers regarding Autism Spectrum Disorder. (Testimony of SLP; Parent Exhibit p. 293-294.)

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<sup>14</sup> SLP hold a Bachelor's Degree and a Master's Degree in communication disorders. She is a member of ASHA. She has been employed by the District for fifteen (15) years and has been providing speech language services to high school students for that period.

53. The Student's December 18, 2012, December 13, 2013, and October 14, 2014 IEPs, all provided the Student with thirty (30) minutes per week of pull out speech language therapy services. (District Exhibits 1, 21, 30.)

54. SLP evaluated the Student on November 4, 2013 pursuant to the IEP Team decision to re-evaluate the Student after the MDR. As a result of her evaluation, SLP determined that the Student demonstrates a weakness in determining solutions and problem solving. His ability to process information was found to be within normal limits, however, his responses were characterized as rote expressions from previous communicative experiences. There was an indication that making social inferences could be a risk factor. The Student was able to respond to reasoning questions accurately but was unable to apply that knowledge to everyday situations. SLP prepared goals based upon her evaluation. All of her proposed goals were accepted by the IEP Team. (Testimony of SLP; Parent Exhibit p. 214-216.)

55. SLP documented her sessions with the Student in the iTAMES system, a system used to bill Medicare. She documented the dates of the sessions, length of the sessions, whether it was individual or group therapy, and the reasons therapy was provided. (Testimony of SLP.)

56. The Student's speech language goal in the December 13, 2013 IEP reflected his current performance level as follows: "Based on recent data, the Student listens for details and provides coherent responses to inquiries based on the visual imagery strategy. He struggles with pragmatic judgment for solving problems and initiating acceptable ideas and behavior." (District Exhibit 21.) SLP provided a goal to target the Student's deficits as follows: "By December 2014, the Student will make progress toward listening to details to make accurate pragmatic judgments about social situations while utilizing software based materials in a clinical setting with 8 out of 10 correct responses." SLP used software materials at the Student's grade level in

order to assist him to achieve that level. The software programs she used had data charts and progress monitoring built into the software. SLP routinely provided quarterly reports which were sent home to parents. The Student made progress toward that goal. (Testimony of SLP; District Exhibit 21, 25, 32.)

57. The Student's speech language goal in the October 14, 2014 IEP was as follows: "By October 2015, the Student will make progress toward applying the knowledge of details to make accurate pragmatic judgments about social situations while utilizing software based materials in a clinical setting in 8 out of 10 correct responses." (Testimony of SLP; District Exhibit 30.) Progress reports reflected that the Student made progress toward achieving that goals. (Testimony of SLP; District Exhibit 31-34.)

58. This Hearing Officer finds that the Student was provided with speech language services beginning in the second week of his freshman year of high school. He was provided with thirty (30) minutes per week of pull out speech language services. His speech language sessions were documented by SLP in the iTAMES system. This Hearing Officer further finds that the Student's December 13, 2013 and October 14, 2014 IEPs identified the Student's needs in the areas of pragmatics, determining solutions, problem-solving, social inferences, and applying reasoning abilities to everyday solutions and provided goals to address those needs which considered the Student's present levels of performance and were measureable. Further, the Student made progress toward achieving those goals. This Hearing Officer also finds that the IEP Teams on those dates adopted the recommendations of SLP and created speech language goals for the Student based upon those recommendations.

59. This Hearing Officer finds that both CM1 and SLP worked with the Student on his IEP goals related to pragmatics, drawing conclusions, inferencing, and decision making and provided

him with supports to assist him in developing skills in those areas and meeting his December 13, 2013 and October 14, 2014 IEP goals.

60. This Hearing Officer finds that the District increased the Student's social work services from none, pursuant to the December 12, 2012 IEP, to thirty (30) minutes of bi-monthly social work services, pursuant to the December 13, 2013 IEP, in response to the Student's bomb threat incident.

61. No social worker(s) were called to testify at the due process hearing.

62. Parent presented no evidence to support her claim that the social work goal in the December 13, 2013 IEP relating to the Student's abilities to interpret the subtleties of social situations was not measurable and the Student's progress was not monitored.

63. This Hearing Officer finds that the social work goal in the December 13, 2013 IEP relating to the Student's abilities to interpret the subtleties of social situations was measurable and the Student's progress was monitored as no evidence to the contrary was presented.

64. This Hearing Officer finds that the October 14, 2014 IEP did not provide a social work goal to address the Student's needs regarding his abilities to interpret the subtleties of social situations. However, said IEP provided a speech language goal that addressed the Student's needs in that area.

65. The Student received passing grades in his freshman 2013-2014 school year and sophomore 2014-2015 school year. (District Exhibit 38.)

66. Explanation of Procedural Safeguards were provided to the Parent on December 18, 2012, December 2, 2013, and October 14, 2014. (District Exhibits 1, 21, 30.) Parent did not provide any evidence to contradict this documentary evidence.

67. This Hearing Officer finds that Parent received the Explanation of Procedural Safeguards on December 18, 2012, December 2, 2013, and October 14, 2014.

68. The Student testified at the due process hearing. The Student reported that he was not receiving various accommodations and requested additional speech language services and social work services. (Testimony of Student.) However, the Student's testimony appeared to be very rote, as if he had been coached and was reciting answers that he had memorized. Further, additional evidence presented by Parent at hearing did not corroborate the Student's requests. Therefore, this Hearing Officer finds Student's testimony of be unpersuasive.

69. No evidence was presented to support Parent's contention that the Student was denied one to one supports in the areas of social work and speech language services. The October 2, 2013, November 1, 2013, December 13, 2013 and October 12, 2014 IEPs did not provide for one to one supports for social work and speech language services.

### **CONCLUSIONS OF LAW**

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

#### **Free Appropriate Public Education (FAPE)**

The Individuals with Disabilities Education Act ("IDEA") guarantees children with disabilities the right to a free, appropriate, public education ("FAPE"). 20 U.S.C. §1412(a)(1). In order to determine whether a school district has provided a FAPE requires the determination of whether the school district: (1) complied with the procedural requirement(s) of IDEA, and (2) developed an Individualized Education Program ("IEP") that is "reasonably calculated to enable the child to received educational benefits." *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982).

### Procedural Violations

The Parent alleges in her Due Process Complaint notice, and specification and clarification of issues, that the Student was denied FAPE when (1) the required IEP team members were not present at the IEP meetings convened between October 2, 2013 and October 14, 2014, specifically the school social worker and transition coordinator and (2) Parent's requests for an IEP meeting in the Spring of 2015 were disregarded. (IHO Exhibit # 1, 11, 14.)

IDEA requires the following:

(a) *General.* The public agency must ensure that the IEP Team for each child with a disability includes -

(1) the Parent;

(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(3) Not less than one special education teacher of the child . . . ;

(4) A representative of the public agency who -

(i) Is qualified to provide or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

...

(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;

...

(e) *IEP Team attendance.*

...

(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused for attending the IEP Team meeting, in whole or in part . . . if -

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits, in writing to the parent and IEP Team, input into the development of the IEP prior to the meeting. 34 C.F.R. §300.321.

Each public agency must ensure that the IEP Team reviews the child's IEP periodically, but not less than annually. 34 C.F.R. §300.324.

The testimony and documentary evidence presented at hearing illustrate the following. During the period October 2, 2013 and October 14, 2014, one MDR and two IEP meetings were held. The school social worker was not present at the October 2, 2013 MDR, as the Student was

not receiving social work services at that time. (FF# 4.) Parent knowingly and voluntarily excused, in writing, the presence of the school social worker at the November 1, 2013 domain meeting. However, the IEP Team determined that a re-evaluation of the Student in the area of social/emotional status was necessary based on the social worker's input prior to the meeting. (FF# 14, 24.) The social worker was present at all other IEP meetings held during the times in question. (FF# 26.) No evidence was presented to support Parent's contention that the transition coordinator was not present at any of the IEP meetings held within that period. (FF# 25-26.)

Parent further contends that her Spring 2015 requests for an IEP meeting were disregarded. However, no evidence was presented to support Parent's contention that she requested an additional IEP meeting during the 2014-2015 school year. The testimony and documentary evidence presented reflect Parent's request for a meeting with the Student's case manager, CM2, in April 2015. CM2 responded by requesting a further description of the issues Parent sought to discuss. The record contains no evidence of any additional follow up to that request by Parent. (FF# 27-29.)

Therefore, based upon the evidence presented at hearing, it is the determination of this Hearing Officer that the District did not violate Parent's procedural due process rights and therefore, did not deny the Student FAPE.

### **Substantive Violations**

"The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the IDEA to state and local educational agencies in cooperation with the parents or guardians of the child." *Rowley* at 207. Educators "have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents." *Lachman v.*

*Illinois State Bd. Of Educ.*, 852 F.2d 290, 297 (7<sup>th</sup> Cir. 1988); *Williams v. Milwaukee Public Schools* (E.D. Wis. 2012).

Parent contends that Student was denied FAPE when he did not receive the following: (1) Speech language and social work services as required by the December 18, 2012 IEP; (2) transition services as required by the December 18, 2012 IEP; (3) co-taught special education and general education in math and language arts as required by the December 18, 2012, October 2, 2013, November 1, 2013, December 13, 2013, and October 14, 2014 IEPs; (4) various accommodations as required by the December 12, 2012, December 13, 2013, and October 14, 2014 IEPs; (5) a social work plan, crisis plan, and health plan as a result of the MDR, IAES, and October 2, 2013 IEP; (6) one to one support in the areas of social work and speech language therapy; (7) accommodations in the form of extended time on the ACT pursuant to the December 13, 2013 IEP; and (8) his social work services were not increased in the December 13, 2013 IEP.

“[T]o prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant portions of the IEP.” *Houston Ind. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5<sup>th</sup> Cir. 2000). “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9<sup>th</sup> Cir. 2007).

The testimony and documentary evidence presented at hearing illustrate the following. The Student’s December 18, 2012 IEP did not provide for social work services for the Student. (FF# 4.) The Student began receiving speech language services of thirty (30) minutes per week,

as required by the December 18, 2012 IEP, in the second week of his freshman year of high school. (FF #52, 53, 58.) Based upon the evidence presented, the Student missed one weekly session of speech language services during the first week of his freshmen year of high school. However, this Hearing Officer finds that the loss of one thirty (30) minute session of speech language services to be such a small deviation from the Student's IEP as to be immaterial.

The Student's December 18, 2012 IEP provided for transition services for the Student. Based upon the credible and persuasive testimony of TC, this Hearing Officer finds that the Student received transition services as required by the 2012 IEP. (FF# 6-7.)

Parent contends that the Student did not receive co-taught special education and general education instruction in math and language arts as required by various IEPs. The Student was not provided with co-taught special education and general education classes in math and language arts for the 2013-2014 school year, as this was not required by his December 18, 2012, October 2, 2013, November 1, 2013, and December 13, 2013 IEPs. During his freshman year of high school, the Student was in a general education English class where he received additional supports from his case manager/resource teacher and an instructional aide, including small group instruction, and modifications to the curriculum, as required by his IEPs. (FF #35.) During his freshman year of high school, the Student was placed in a self-contained special education classroom for math as his skills were below grade level and he required additional supports. (FF #32.)

At the beginning of his sophomore year, the Student was placed in general education math, Geometry. The Student struggled with Geometry and CM2 worked with the Student extensively. At the end of the first semester, the Student was still struggling with Geometry, therefore, CM2 recommended a change in placement for the Student to a co-taught general

education/special education Geometry class. Parent was not supportive of this change as she wanted the Student placed in general education. (FF# 46-47.) This Hearing Officer finds that the Student was not denied FAPE as his 2013-2014 and 2014-2015 IEPs did not provide for co-taught special education and general education math and language arts. This Hearing Officer further finds that the Student's math and language arts instruction were appropriate to meet his unique, individual needs. He was provided with case manager, instructional aide and resource supports in language art; self-contained special education instruction in math his freshman year; and co-taught instruction in math his sophomore year, when he was unable to make satisfactory progress in a general education math class. (FF# 32, 35, 46-48.)

Parent further contends that the Student was not provided with the following accommodations: test taking adaptations related to classroom, district, and state wide assessments; classroom modifications; chunking of data; calculator; peer tutoring; checks for understanding; open book and notes; program modifications; extended time to complete assignments and teacher support for assignment completion; separate room/quiet place for test taking and assignment completion; access to school social worker; social interaction and support for interaction with peers and school personnel pursuant to the December 12, 2012, December 13, 2013, and October 14, 2014 IEPs. However, the evidence presented at hearing does not support this contention. CM1 and CM2 provided credible, persuasive testimony that they notified the Student's teachers at the beginning of each semester of the accommodations required by the Student's IEP(s). (FF # 30, 31, 33, 35-36.) CM1 worked with the Student within his biology and socials studies classrooms, an instructional aide assisted him in his remaining general education classes, ensuring that he receive required accommodations. GEE and GEB corroborated the testimony of CM1 and themselves, testified to the accommodations and

supports the Student received in their respective classrooms. (FF# 34-36, 43.) CM2 worked with the Student in the areas of reading, writing, and mathematics. He worked extensively with the Student in sophomore Geometry, in which the Student struggled, providing frequent tutoring sessions, opportunities to re-take tests and quizzes, and interacting with the Student's other teachers to ensure that accommodations and IEP goals were being addressed. (FF# 44-47, 49.) This testimony was uncontroverted by Parent. Based upon the overwhelming testimony at hearing, this Hearing Officer finds that the Student received the required accommodations pursuant to the December 12, 2012, December 13, 2013, and October 14, 2014 IEPs.

Parent next contends that the Student was denied FAPE when he was denied a social work plan, crisis plan and health plan as a result of the MDR, IAES, and as required by the October 2, 2013 IEP. The record is devoid of evidence suggesting that the Student required any of said plans to meet his educational needs and Parent presented no evidence to support this contention. (FF# 50.) Based upon that, this Hearing Officer finds that the Student was not denied FAPE when the District did not provide any of said plans.

The next contention is that the Student was denied FAPE when he was not provided with one to one support in the areas of social work and speech language services pursuant to the October 2, 2013, November 1, 2013, December 13, 2013, and October 14, 2014. The listed IEPs did not provide for one to one services in those areas and Parent provided no evidence to the contrary. (FF# 69.) Based upon this, this Hearing Officer finds that the Student was not denied FAPE when he did not receive one to one support in social work and speech language services, because the IEPs did not require those services and no evidence was presented by Parent to illustrate that the Student's unique needs required said services in order for him to make educational progress.

Parent alleges that the Student did not receive accommodations in the form of extended time on college entrance exams, specifically the ACT, pursuant to the December 13, 2013 IEP. This Hearing Officer found that the Student did not register for or take the ACT in his freshman or sophomore years of high school. Therefore, he was not denied accommodations on that entrance exam. (FF# 38-39.)

Parent next contends that the District did not increase the Student's social work minutes in December 2013 to address his psychological state. The evidence presented illustrated that the Student's social work services were increased from none to thirty (30) minutes of bi-monthly social work service pursuant to the December 13, 2013 IEP. (FF# 60.) This Hearing Officer finds that Parent presented no evidence to support her contention that the Student required thirty (30) to sixty (60) minutes per week of social work instruction. Therefore, it is further found that the Student was provided FAPE.

Parent contends that the District failed to properly evaluate the Student during his re-evaluations in November and December 2013. Specifically, Parent alleges that the District failed to evaluate the Student in all areas of suspected disability when it failed to perform a psychological evaluation. The record reflects that, at the domain meeting held on November 1, 2013, the Student was to be evaluated in the areas of academic achievement, functional performance, and cognitive functioning, among others. (FF# 14.) A Psychological Evaluation was performed as part of the Student's re-evaluation and PSY, the school psychologist testified at hearing as to the contents of his report and his findings.. (FF# 15-19.) Therefore, Parent's allegation is without merit. This Hearing Officer finds that a psychological evaluation was performed as required by the November 1, 2013 domain meeting. Said psychological evaluation

evaluated the Student in all areas of suspected disability, thus providing him with FAPE. (FF# 20.)

Parent further alleges that the November 1, 2013 FBA and BIP failed to adequately address the Student's educational needs relative to positive peer and adult interactions, self-advocacy skills, and appropriate replacement behaviors because classroom observations were not performed. Parent failed to present any evidence illustrating that the FBA and BIP were inappropriate or that they did not adequately address the Student's needs. (FF# 21-22.) Several witnesses credibly testified that the Student was able to advocate for his own interests and needs. (FF# 6, 35.) Therefore, Parent's claim is without merit and this Hearing Officer finds that the Student was provided FAPE.

Parent next argues that the December 13, 2013 and October 14, 2014 IEPs failed to address the Student's educational needs in the areas of pragmatics, determining solutions, problem-solving, social inferences and applying reasoning abilities in everyday solutions as those IEPs did not adopt the recommendations of the speech language pathologist, create and implement goals based upon those recommendations, and increase the Student's speech language minutes to address said goals. The testimony at hearing illustrates that the Student's educational needs in the above areas were identified, all recommendations of the speech language pathologist were adopted by the IEP Team, and speech language goals were created and implemented based upon those recommendations. (FF# 54, 56-59.) Therefore, Parent's claims are without merit.

Based upon the above, it is the determination of this Hearing Officer that, at all times, in question the Student was provided FAPE.

**IEP Goals**

Parent next contends that various IEP goals denied the Student FAPE as they failed to consider his present levels of performance, were not measurable, were not tracked, and progress was not monitored. Under IDEA, an IEP must include “(1) a statement of the child’s present levels of academic and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum” and “(2)(i) [a] statement of measurable annual goals, including academic and functional goals designed to (A) Meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum.” 34 C.F.R. 300.320(a). Further, “[b]eginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include – (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) The transition services needed to assist the child in reaching those goals.” 34 C.F.R. §300.320(b). “[T]he IEP should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Id.* at 3036. “[A]n IEP is reasonably calculated to confer educational benefit when it is ‘likely to produce progress, not regression or trivial educational advancement.’” *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7<sup>th</sup> Cir. 2004.) “Objective factors, such as regular advancement from grade to grade, and achievement of passing grades, usually show satisfactory progress. *Id.*

### **Math Goals**

Parent contends that the Student’s math goal contained in the December 13, 2013 IEP was not measurable or tracked and the Student’s present levels of performance were not considered. The Student was placed in an instructional special education math class for his

freshman year of high school. (FF# 32.) CM2 credibly testified that he was responsible for the math goal at the beginning of the Student's sophomore year. He monitored the Student's class grades, assessments and progress toward his goals. (FF# 44.) The Student received a passing grade in math in his Freshman year of high school. (FF# 65.) No other testimony was provided regarding this goal.

Parent further contends that the Students' math goal contained in the October 14, 2014 IEP was not appropriate to enable the Student to make educational progress, was not measurable and the Student's progress was not monitored. The Student was placed in general education math, Geometry, at the beginning of his sophomore year. CM2 credibly testified that the Student struggled with Geometry and CM2 worked with the Student extensively. The Student came to CM2 regularly for tutoring services. He would re-take quizzes and tests with CM2 and CM2 went over the Student's class assignments with him until he understood the material and felt comfortable with it. CM2 documented his interventions. CM2 worked closely with the Student's general education math teacher. At the end of the first semester, the Student was still struggling with Geometry, therefore, CM2 recommended a change in placement for the Student to a co-taught general education/special education class. Parent was not supportive of this change as she wanted the Student placed in general education. (FF# 46.) Based upon the testimony presented, this Hearing Officer finds that the Student's December 13, 2013 and October 14, 2014 IEP math goals were measurable, tracked and considered the Student's present levels of performance. Parent failed to provide any evidence to the contrary (FF# 47.)

### **Reading Goals**

Parent contends that the Student's reading goals, contained in the December 13, 2013 IEP and October 14, 2014 IEP did not consider his present levels of performance, were not

measurable, tracked, or progress monitored. However, the testimony presented at hearing contradicted this contention. GEE worked with the Student daily on his IEP reading goal. She recorded her observations and the Student's progress on the on-line grade reporting system. She also provided goal progress information to CM1. (FF# 35, 37.) CM1 worked with the Student on his English IEP goal related to inferencing. She prepared the Student's progress reports that were sent home to Parent. (FF# 31.) CM2 assisted in drafting the Student's October 14, 2014 reading goal as part of the IEP team. He was responsible for monitoring and tracking the Student's progress toward that goal. (FF# 44, 47.) The Student received passing grades in English in his freshman and sophomore years of high school. (FF# 65.) Based upon the testimony presented, this Hearing Officer finds that the Student's IEP reading goals at issue considered his present levels of performance, and were measurable, tracked and his progress was monitored, as evidenced by his passing grades and advancement from grade to grade. (FF# 37, 47.) Parent failed to provide any evidence to the contrary. (FF# 44-47.)

### **Speech Language Goals**

Parent next contends that the Student's December 13, 2013 IEP speech language goal failed to consider the Student's present levels of performance and did not provide a means for measuring the Student's progress. SLP evaluated the Student in November 2013. (FF# 54.) The Student's current performance level was stated as follows: "Based on recent data, the Student listens for details and provides coherent responses to inquiries based on the visual imagery strategy. He struggles with pragmatic judgment for solving problems and initiating acceptable ideas and behavior." SLP provided a goal to target the Student's deficits as follows: "By December 2014, the Student will make progress toward listening to details to make accurate pragmatic judgments about social situations while utilizing software based materials in a clinical

setting with 8 out of 10 correct responses.” SLP used software materials at the Student’s grade level in order to assist him to achieve that level. The software programs she used had data charts and progress monitoring built in to software. SLP routinely provided quarterly reports which were sent home to parents. The Student made progress toward that goal. (FF# 56, 58.) Based upon the credible, persuasive testimony of SLP, this Hearing Officer finds that the Student’s December 13, 2013 IEP speech language goal considered the Student’s present levels of performance and provided a means for measuring the Student’s progress.

### **Transition Goal**

Parent next contends that the Student’s transition goal in the December 13, 2013 IEP failed to consider the Student’s present levels of performance, was not tracked, and provided no means to measure the Student’s progress. TC created transition plans for the Student taking into consideration his desires for future education and employment and his present levels of performance. TC wrote a transition goal for the Student during his freshman year. The goal was related to employment. The Student was to attend transition workshops and complete 80% of the activities related to his career goal. He completed three (3) workshops. TC kept records of how the Student performed on tests. She kept data charts and observation logs. She reported her data to the case manager to send to Mother on a quarterly basis. TC also wrote a transition goal for the Student in his sophomore year related to future education and employment, given the Student’s desires to be a musician or a cook. (FF# 6.) The December 13, 2013 IEP transition goal considered the Student’s present levels of performance, was tracked and provided a means to measure the Student’s progress. (FF# 7.) This Hearing Officer finds TC’s hearing testimony to be credible, persuasive, and uncontroverted. It is further found that the Student’s December

13, 2013 IEP transition goal considered his present levels of performance, was tracked and provided a means to measure the Student's progress.

### **Social Work Goals**

With respect to social work goals, Parent alleges that the Student's social work goal contained in the December 13, 2013 IEP relating to the Student's abilities to interpret the subtleties of social situations was not measureable and the Student's progress was not monitored. No social workers were called to testify at the due process hearing. (FF# 61.) SLP provided an IEP goal to target the Student's difficulties in making pragmatic judgments about social situations. (FF# 56.) She worked with the Student on this goal, tracked his progress and provided reports of his progress. CM1 also worked with the Student on this goal. (FF# 57-59, 62.) Based upon the credible and persuasive testimony of SLP and CM1, this Hearing Officer finds that the Student's December 13, 2013 IEP goal relating to his abilities to interpret the subtleties of social situations was measured and the Student's progress was monitored.

While Parent further contends that the October 14, 2014 IEP failed to provide a social work goal to address the Student's needs regarding his abilities to interpret the subtleties of social situations, said IEP provide a speech language goals to address the Student's needs in that area. (FF# 64.) This evidence was uncontroverted. Therefore this Hearing Officer finds that the Student was provided with an IEP goal to address his unique needs in the area of interpreting the subtleties of social situations.

### **Attention, Focus, Communication Goal**

Parent alleges that the District failed to provide the Student with IEP goals to address his unique needs in the areas of attention, focus, and poor communication skills with adults. The Student did not display any deficits when communicating with adults in the school setting. (FF#

40.) Attention, focus and poor communication skills were not identified areas of need and Parent failed to produce any evidence to the contrary at hearing. (FF #40-42.) Therefore this Hearing Officer finds that the Student was not denied FAPE when his IEPs did not provide goals to address said areas.

As the hearing testimony and evidence illustrate, Parent's claims regarding the deficiencies in the above IEP goals are without merit. This Hearing Officer finds that, at all times in question, the Student was provided with appropriate, measurable IEP goals that were tracked and progress monitored. The Student was able to meet these goals, as is evidenced by passing grades and his advancement from grade to grade. This Hearing Officer further finds that, at all times in question, the Student received FAPE.

**Denial of FAPE at IAES**

The Student participated in a bomb threat incident that occurred on September 29, 2013. An MDR was held on October 2, 2013 and the Student was removed to an IAES on October 2, 2013, for eleven (11) school days. He returned to his current placement on October 17, 2013.

The issue certified for hearing by this Hearing Officer related to his incident was as follows:

Whether the Student inflicted serious injury to warrant an Interim Alternative Educational Placement for eleven (11) school days beginning on October 1, 2013 despite the District's determination that his actions were a manifestation of his disability.<sup>15</sup>

Presumably, the Student's removal was based upon 34 C.F.R. 300.530(g) which provides as follows:

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<sup>15</sup> This issue was certified for hearing after two attempts at additional specification of issues by Parent's counsel (IHO Exhibit 1, 11, 14.) and two (2) days of prehearing conference which included multiple conversations with Parent's counsel to identify the issues to be presented at hearing.

(g) *Special Circumstance*. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child –

...

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

However, no testimony was presented by either party to support the contention that the Student's actions on September 29, 2013 did or did not rise to the level of a "Special Circumstance" under IDEA. Based upon this and the fact that Parent's requested remedy is compensatory education, this Hearing Officer finds it appropriate to recast the issue as whether a disciplinary change in placement occurred when the Student was placed at an IAES for eleven (11) school days for the bomb threat incident and, if so, whether the school district was obligated to return the Student to the placement from which he was removed upon determining that the Student's actions were a manifestation of his disability.

By definition, a disciplinary change in placement occurred when the school district determined to remove the child for eleven (11) school days. Pursuant to 530(e), the school district must conduct a manifestation determination.

(e) *Manifestation Determination*. (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine –

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP. 34 C.F.R. §300.530 (e).

Testimony at hearing revealed the following. The bomb threat incident occurred on September 29, 2013. An MDR was held on October 2, 2013 and the MDR team determined that

the Student's conduct was a manifestation of his disability and was a direct result of the school district's failure to implement the IEP. (FF# 11.) Accordingly, the IEP Team was required to conduct a functional behavioral assessment and implement a behavioral intervention plan, and return the child to the placement from which he was removed. 34 C.F.R. 300.530(f). In this case, the IEP Team conducted a Functional Behavioral Assessment (FBA) and implemented a Behavioral Intervention Plan (BIP) and should have returned the Student to the placement from which he was removed. Student was removed to the IAES on October 2, 2013, for eleven (11) school days. He returned to his current placement on October 17, 2013. (FF# 12.) The school district did not return the student to the placement from which the student was removed.

The school district's failure to return the Student to his current placement on October 2, 2013, did not rise to a denial of FAPE because the school district provided comparable/identical services to the Student and the parent failed to demonstrate any harm as a result of the removal to the IAES. (FF# 13.) To prevail on a claim for compensatory education, based upon a denial of FAPE, Parent must show that the Student was denied required services. No evidence was presented at hearing to show that the Student was denied required services. Therefore, this Hearing Officer finds that the Student's removal to the IAES was not a change of placement but merely a change of location. It is further found that the Student did receive the same or comparable educational services as required by his December 18, 2012 IEP and the MDR while placed at the IAES for eleven (11) school days. This Hearing Officer further finds that the Student received FAPE while placed at the IAES. To the extent that the Student's educational and disciplinary records record the suspension, the suspension must be expunged as the Student's conduct was determined to be a manifestation of his disability.

**ORDER**

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

The District must expunge the Student's October 2, 2013 through October 17, 2013 suspension as his conduct was determined to be a manifestation of his disability.

Parent's requested relief is denied and the complaint is dismissed with prejudice.

**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: May 14, 2016

[REDACTED]

/s/ Janet K. Maxwell-Wickett

Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

[REDACTED]

Phone: [REDACTED]

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Email: [REDACTED]