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SPECIAL EDUCATION
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ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

STUDENT¹,

Student,

Case No: 2016-0152

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer


School District.

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 20-year-old, male who is a high school graduate of a District school. He graduated from high school and received his diploma on May 25, 2014. During his senior year of high school, he qualified for special education services under the disability categories of autism (ASD) and other health impairment (OHI), due to an Attention Deficit Hyperactivity Disorder (ADHD) diagnosis, pursuant to an eligibility and IEP meeting on October 18, 2013. The Student was found to have educational needs in the areas of: organizational skills, focusing, completing work and writing assignments, class participation, and social interactions with peers.

¹ Personal identification information is provided in Appendix A.

His senior year of high school, the Student was enrolled in general education elective classes in Graphic Arts, PE, Computer Applications, Culinary Arts, as well as one non-elective, World Literature class. After the Student's graduation, Parent learned that Student may have been eligible to remain in a District school until the day before his 22nd birthday to obtain transition skills and services. Parent maintains that the Student was improperly graduated from high school, seeks rescission of his high school diploma, reinstatement of his eligibility for special education services until the day before his 22nd birthday, and compensatory education. The District maintains that the Student was appropriately graduated from high school and, at all times in question, received a free and appropriate public education.

This matter was remanded as a result of an appeal to the United States District Court for the Northeastern District of Illinois. The matter was remanded for ISBE to conduct a due process hearing on the merits of the Parent's claims.² ISBE received notice of the United States District Court decision on September 9, 2016. The Parent's original Due Process Complaint Notice (DPCN) was filed on October 16, 2015. The parties participated in mediation on October 13, 2016 at which time they reached an interim agreement to obtain independent evaluations. The parties participated in a second session of mediation on January 24, 2017 but were unable to resolve the outstanding issues. The 45-Day timeline for this Hearing Officer to render a decision began to run on September 9, 2016 and the initial 45-Day deadline was November 21, 2016.

The Parties jointly requested continuances of the 45-day deadline on October 17, 2016, December 1, 2016, and January 24, 2017 to accommodate execution of the interim settlement

² Parent's original Due Process Complaint Notice was filed on October 16, 2015. The District moved to dismiss the due process complaint notice. After briefing, the originally assigned IHO granted the motion. Parents filed a Motion to Reverse and Remand with the United States District Court for the Northeastern District of Illinois. District and ISBE moved for summary judgment. Parents' motion for a reversal and remand was granted and the District and ISBE's motion for summary judgment was denied. See [REDACTED], 2016 C 1571.

agreement, IEE evaluations, and the requested due process hearing dates. The requested continuances were granted for good cause shown pursuant to this Hearing Officer's orders dated October 18, 2016, December 4, 2016, and January 28, 2017. Due Process Hearing dates were set by agreement for March 14-17, 2017 and the decision due date was reset to March 27, 2017.

The Parent opted for a closed hearing. The Due Process Hearing was held on March 14-17, 2017. Ms. [REDACTED] of [REDACTED] represented the District. Dr. [REDACTED] was the District Representative. Ms. [REDACTED] and Ms. [REDACTED] of [REDACTED] represented the Parent. The parties presented some joint witnesses.³ The District presented the following Exhibits: D A-F, M, Y, Z, AA, DD, RR, TT, VV, XX, ZZ, AAA which were admitted into evidence. The Parent presented the following Exhibits: P 1-8, 10-17, 19-22, 25, 32, 34, 36-38, 42-45, 61, 62, 64-66, 68 which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-33. Both parties submitted oral closing statements and any case law relied upon.

ISSUES

The issues raised by the Parent are as follows:

(a) Whether the Student was denied FAPE when the District allegedly failed to evaluate the Student in the areas of cognitive functioning; academic achievement in reading, writing, and math; social emotional functioning; vocational performance; and independent living skills from October 18, 2013 until the present.

The Parent requests that this Hearing Officer determine that the District failed to provide the Student with a free and appropriate public education when it failed to evaluate the Student in the areas of cognitive functioning; academic achievement in reading, writing, and math; social emotional functioning; vocational performance; and independent living skills. The District maintains that at all times in question it provided appropriate evaluations of the Student and provided the Student with a FAPE. The District further maintains that the time period at issue is from October 18, 2013 until the Student graduated in May of 2014 and that Parent agreed that no further evaluation of the Student was necessary during the time period in question.

³ Witnesses are listed in Exhibit A.

Parent further requests the District be ordered to reimburse the Parent for the independent educational evaluation conducted by Dr. [REDACTED].

(b) Whether the Student was denied FAPE when the District allegedly failed to develop an IEP designed to enable the Student to make educational progress by failing to provide measurable annual goals and appropriate related services designed to address the Student's unique educational needs in the areas of academic instruction (reading, writing, and math), job skills training, job coaching, independent living skills instruction, transportation, post-secondary education research and application support, and interpersonal relationship development instruction from October 18, 2013 to the present.

The Parent requests that this Hearing Officer determine that the District denied the Student FAPE by failing to provide the measurable annual goals and appropriate related services designed to address the Student's unique educational needs in the above stated areas. The District maintains that, at all times in question, from October 18, 2013 to May 2014, the Student was provided FAPE.

(c) Whether the Student was denied FAPE when the District allegedly failed to provide individualized transition services based upon age-appropriate assessments to prepare the Student for his post-secondary goals from October 18, 2013 to the present.

The Parent requests that this Hearing Officer determine that the District denied the Student FAPE by failing to provide appropriate, individualized transition services based upon assessments to prepare the Student for his post-secondary goals during the time period in question. The District maintains that, at all times in question, from October 18, 2013 to May 2014, the Student was provided FAPE.

(d) Whether the Student was denied FAPE when the District allegedly improperly graduated him from special education.

The Parent requests that this Hearing Officer determine that the District denied the Student FAPE when it improperly graduated him from special education. The District maintains that, at all times in question, from October 18, 2013 to May 2014, it provided the Student with FAPE.

For alleged violations of (b), (c), and (d) above, Parent requests that this Hearing Officer award the following relief:

- (1) Order the District to rescind the Student's diploma and restore his eligibility for special education and related services under the IDEA;
- (2) Order the District to place the Student in a transition program at a therapeutic day school that can meet his academic and transition needs;
- (3) Order the District to provide compensatory education services by allowing the Student to remain in the therapeutic day school's transition program until the day before his 24th birthday;

- (4) Order the District to pay for the Student to enroll in a driver's education program;
- (5) Order the development of an appropriate IEP which considers the independent psychological and vocational evaluations of the Student and provides academic instruction, job skills training, job coaching, independent living skills instruction, transportation services, post-secondary education research and application support, and interpersonal relationship development instruction.

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 Parent's counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a 20-year old male who graduated from high school May 25, 2014. The Student currently lives with his mother and grandmother. He is not prepared to go to college, does not leave his home much, does not socialize with friends, does not drive and does not know how to take public transportation. He is employed as a caretaker for his grandmother. He helps his grandmother to get up in the morning and go to bed at night. He ensures that she eats meals and ensures that she takes her medication. However, he is unable to do the job without assistance from his mother. His mother provides constant verbal prompts for the tasks he has to perform. The Student would like to be able to live independently, obtain employment outside his home, and would like to attend community college. The Student has not been in attendance at school or in any vocational or transition programs since his graduation from high school. (Testimony of Student and Parent.)

2. While in school, the Student qualified for special education services under the disability categories of autism (ASD) and other health impairment (OHI), due to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), pursuant to an eligibility and IEP meeting held on October 18, 2013. This meeting was held for the following purposes: review of existing data, reevaluation, IEP review/revision, transition, and annual IEP review. (PE 16 & 17.)
3. The Student was reevaluated in 2008 when he was in sixth grade at age eleven (11) years, eleven (11) months. At that time he received a psychological evaluation. (PE 42.)
4. The Student was due for triennial reevaluation in 2011. However, he was not reevaluated at that time. (PE 37; Testimony of CM, SW1, AG, ME, SC, Parent.)
5. At the October 18, 2013 eligibility and IEP meeting, one of the stated purposes of the meeting was triennial reevaluation of the Student. However, the IEP team determined that no additional data was needed and the Student was not reevaluated. The Student did not receive reevaluation at any time during his high school career. (PE 16, 25, 32, 37; Testimony of CM, SW1, AG, ME, SC, Parent.)
6. Parent was not, and is not, an educator. Parent was present at the October 18, 2013 IEP meeting and agreed with the IEP team's recommendation that the Student did not require additional evaluations in 2013 because she trusted the recommendation of school staff and the IEP team and trusted that they would act in the Student's best interests. (Testimony of Parent.)
7. During his senior year of high school, the Student was enrolled in only general education classes: Graphic Arts, Culinary Arts, PE, Computer Applications, and World Literature. At the time of the October 18, 2013 eligibility and IEP meeting, the Student was receiving failing grades in Graphic Arts, Culinary Arts, and Computer Applications. In fact, he failed those classes in the first quarter of the 2013-2014 school year. The following were areas of concern:

poor organization skills, lack of ability to focus, needs help with writing assignments, difficulty with assignment completion, limited social interaction with peers. (DE F, PE 10, 16, 17; Testimony of Parent, ME, SW1.)

8. At the October 18, 2013 IEP meeting, Parent expressed concerns about the Student's current progress and failing grades. (PE 16, Testimony of Parent.)

9. While outside of the statute of limitations period for purposes of this due process hearing, the Student's freshman, sophomore, and junior year IEPs repeatedly reflect Parent's concerns regarding the Student's academic progress, lack of ability to focus, difficulty with homework completion, and lack of socialization with peers. (Testimony of Parent, PE 16, 25, 32, 37.)

10. During his junior year of high school, the Student received 900 minutes per week in a self-contained special education classroom for non-elective classes including Geometry, U.S. History and Consumer Education. (PE 25.)

11. At hearing, school staff conceded that a Student's academic and functional performance can change between the sixth and twelfth grades. (Testimony of SW1, ME, CM, SC.) Staff further conceded that updated evaluation data may provide additional information regarding the Student's academic and functional performance difficulties. (Testimony of AG, ME, SW1, SC.)

12. The October 18, 2013 IEP reflects the Student's functional performance as follows: poor organization skills; displays strengths in auditory processing and individualized instruction; has trouble focusing and completing writing or work assignments; needs to increase class participation to show he understands; not completing work in his classes which is resulting in failing grades. The Student's communicative status reflects: limited spontaneous conversation but he responds to others appropriately. Social/Emotional status indicates: limited social interaction with peers. (PE 16 & 17.)

13. The only evaluation data presented at the October 18, 2013 eligibility and IEP meeting was a 2008 psychological evaluation. A school psychologist was not present at the 2013 eligibility and IEP meeting. (PE 16.) No one was present at the 2013 IEP meeting who was qualified to interpret evaluation data. While Dr. A testified that ME was qualified to interpret evaluation data, ME herself testified that she did not believe that she was qualified to interpret evaluation data and did not do so at the meeting. (Testimony of Dr. A and ME.) This hearing officer finds the testimony of ME to be persuasive. ME did not believe that she was able to interpret evaluation data and did not do so at the October 18, 2013 IEP meeting.

14. This Hearing Officer finds that the District did not evaluate the Student in any area of suspected disability after May 2008 through the time of his graduation from high school in May 2014 or thereafter. (PE 16, 25, 32, 37; Testimony of CM, SW1, AG, ME, SC, Parent.)

15. The Student's teachers were provided with a list of the accommodations and modifications he was to receive. However, they did not receive copies of his IEP. (Testimony of SH, AG, CT, BM; PE 21.)

16. The Student's accommodations and modifications did not address all of his deficits and areas of educational need. They provided for extended response time on assignments and tests, oral responses to assessments, modification of assignments without compromising content, frequent breaks, reduction of amount of written work without compromising content, skeleton notes for the Student to follow along with the lesson, encouragement for after school tutoring. (PE 21.)

17. The Student's general education teachers made ad hoc modifications and accommodations to attempt to assist the Student in their respective classrooms such as walking around the classroom to check on the Student and ensure that he was on task; consulting with

various special education and resource teachers for additional suggestions; and modifying the curriculum to assist the Student in passing the class. (Testimony of AG, BM, and CT.)

18. AG's understanding of the Student's disability was that his autism did not affect his work. (Testimony of AG.)

19. Computer Applications had several components to the curriculum. CT modified the curriculum for this Student. The Student was only required to learn the keyboard in order to achieve a passing grade for the class. (Testimony of CT; DE XX.)

20. Modified curriculum was not contained in the Student's IEP. The Student's accommodations and modifications provided that he was to receive a reduced amount of work without compromising content. (PE 16, 21.)

21. In Culinary Arts, the Student was allowed to stay after school in the culinary arts room to clean the room in order to receive additional points to help him receive a passing grade in the class. (Testimony of Parent, BM.)

22. The Student has below average abilities to reason with nonverbal information and high average abilities to reason with verbal information. The significant discrepancy between the Student's verbal and performance abilities make it appear that the Student is more capable than he actually is to complete tasks. (Testimony of Dr. L; PE 6.)

23. The Student also exhibits an extremely slow speed of processing. This interferes with this ability to retain information, complete tasks, and organize his approach to tasks. (Testimony of Dr. L; PE 6.)

24. At the time of the Student's October 18, 2013 eligibility and IEP meeting, there were documented concerns in the areas of the Student's organization, attention, socialization, written responses, and assignment completion. (Testimony of Parent, AG, BM, CT, PJ; PE 16.)

25. The October 18, 2013 IEP reflects that the Student “may need support with establishing independent living.” No assessments were performed to determine the extent to which the Student may need to develop independent living skills. No goals were provided to address this identified need. (PE 16.)

26. The Student had identified deficits in the area of writing and written responses. (Testimony of ME, SH; PE 16.)

27. An Occupational Therapy evaluation was not recommended to address the Student’s writing and written response deficits. (Testimony of ME, SH; PE 16, 17.)

28. There were no IEP goals contained in the October 18, 2013 IEP to address the Student’s needs in the areas of academic performance, organization, attention, socialization, class participation, written responses, and assignment completion. (Testimony of Parent, SH, ME; PE 16.)

29. During the Student’s senior year, Parent came to school to assist the Student in Culinary Arts class and regularly attended afterschool tutoring with the Student. Parent also communicated with the Student’s teachers regularly and frequently supervised the completion of missing assignments at home on weekends. (Testimony of Parent, BM, SW2, SW1, CT.)

30. The October 18, 2013 IEP contained two goals: one was to tour a community college and another was to develop self-awareness through priority-setting and passing his classes. (Testimony of SC, SW1, SH, ME; PE 16.)

31. The Student’s only transition goal was to solidify his career awareness options by May 2014. His present level of performance was “[the student] will attend college to major in business administration. He wants to own a business.” The only benchmark was to tour a local community college which offers business administration by May 2014. (Testimony of SC; PE

16.) This goal was achieved in one day during a tour of a local community college. The Student attended the tour with twenty-five (25) other students. (Testimony of SC, SW2.)

32. In order to attend the tour of the local community college, the Student had to take the community college's entrance test. The Student was provided with prompts and cues in order to assist him in passing the entrance test. (Testimony of SW2.)

33. There was one social work goal in the Student's October 18, 2013 IEP. It was a self-awareness goal. The Student was to "develop self-awareness and self-management skills to achieve school and life success." (Testimony of SW; PE 16.)

34. This goal was taken from Illinois Social Emotional Learning Standards and was not modified to fit the needs of this Student. (Testimony of SW1.)

35. The Student's present levels of performance are that the Student is "bright and able to work independently, however, he struggles to remain focused and interested in some classes. He missed numerous assignments in these classes (computer applications and graphic arts) and appears to lack motivation." (Testimony of SW1; PE 16.) Benchmarks include: the Student to set priorities in building strengths and identifying areas for improvements by the end of the school year 2014 and to set a short term goal and make a plan for achieving it (passing all classes to graduate.) (Testimony of SW1; PE 16.)

36. SW1 believed that the Student was capable of completing his work, he just lacked motivation. He also believed that the student was capable of self-advocacy on his own and could succeed at the local community college with support from Parent. (Testimony of SW1.)

37. SW1 assessed the Student's progress toward this goal each time he saw him. He did not document the results of those assessments. (Testimony of SW1.)

38. Neither of the Student's two IEP goals contained present levels of performance with specific skills identified for specialized instruction. (PE 16.)
39. The Student's social work goal to develop self-awareness and self-management skills does not provide any measurable criteria to determine whether the Student is meeting the goal. (Testimony of SH, SW1, ME; PE 16.)
40. None of the Student's general education teachers during his senior year of high school had any specific training related to working with students with autism. (Testimony of AG, BM, CT, ME, SH, SW1, SC.)
41. The Student's goals were not measured and progress reports were not provided. (Testimony of SW1, SC.)
42. The Student's IEP goals, and his progress toward those goals, were not reviewed prior to the recommendation for his graduation from high school. (Testimony of AG, CT, BM, SH, ME, Parent, SC, SW1.)
43. No formal transition assessment was conducted to develop the Student's transition plan. (Testimony of SC; PE 16.) The Student participated in a vocational interview which was not used to prepare specific goals or transition services. (Testimony of SC; PE 38.)
44. No transition goals were provided which focused on the Student's identified interests, to attend college and a business program. The Student's IEP transition goals, tutoring, social work services, and career planning, did not reflect the Student's goal. No goals were provided to address the areas of identified need in organizational skills, written responses and assignment completion which would be applicable to community college and business program success. (Testimony of SC; PE 16, 34.)

45. Independent living skills were identified as an area of need. No goals were created to support this identified area of need. (Testimony of Parent; PE 16.)

46. SC conceded that the Student did not possess the skills in high school to achieve college success in a business program and applicable goals to assist the Student in developing the necessary skills were not set. (Testimony of SC.)

47. This Hearing Officer finds, based upon the testimony and documentary evidence presented at hearing, that transition assessments and a transition plan crafted to this Student's unique disabilities, educational needs, and post-secondary outcomes were non-existent.

Transition assessments were not conducted and the Student's IEP goals were not tailored to his unique identified needs and post-secondary interests, abilities, and outcomes.

48. The Student had no competitive employment experience. (PE 16.)

49. BHS graduation requirements for 2013-2014 require a total of 21 credits consisting of the following: English – 4 credits, Mathematics – 3 credits; Science – 2 credits; pass both state and federal Constitution test; PSAE Exam must be taken; Social Studies – 3 credits; Consumer Education – 1 credit; Physical Education – enrolled 3 years; and Career and Technical Education or Fine Arts or Foreign Language – 2 credits in either area. (PE 61.)

50. The Student earned 21 credits and graduated from high school on May 25, 2014.
(Testimony of ME; DE F.)

51. An IEP meeting was not held prior to the Student's graduation from high school to determine his progress toward his IEP goals and his readiness for graduation. The decision to graduate him was made upon the basis of his class grades alone. (Testimony of AG, SC, SW1, ME, SH, CT, BM.)

52. School staff and the IEP team members never discussed graduation deferral as an option for this Student with the Parent or the Student. (Testimony of Parent, SC, SW1, CM, ME.) The Student's school counselor was unaware that graduation deferral was an option. (Testimony of SC.)

53. The Student was the education rights holder at the time of his graduation. (Testimony of Parent.)

54. Parent and the Student supported his graduation from high school as they were unaware that any other options existed. (Testimony of Parent and Student.)

55. The Student and Parent were not provided with written notice of the decision to graduate the Student and terminate his special education services. (Testimony of Parent.) This Hearing Officer finds that Parent's testimony is uncontroverted by the District witnesses and documentary evidence presented.

56. A driver's education course was not a graduation requirement for the Student. (Testimony of Dr. A; PE 61.) Students who participated in such a course did so at their own, additional expense. (Testimony of Dr. A.)

57. Participation in a driver' education course may not be safe or advisable for this Student due to his slow processing speed. The Student would need an additional assessment to determine his readiness for and whether it would be safe for him to participate in a driver's education course. (Testimony of Dr. L; PE 6.)

58. This Hearing Officer finds that this Student was inappropriately graduated from high school. While he received the required 21 credit hours to graduate, his teachers inappropriately modified his curriculum in order to ensure a passing grade. Additionally, measureable IEP goals were not crafted to meet his unique identified needs based upon his disability and post-secondary

interests and outcomes. The Student's goals, and his progress toward those goals, was not reviewed prior to the decision to graduate him. The Student and Parent were not provided with information regarding other available options and were not provide with prior notice of the District's decision to graduate the Student and terminate his special education services.

59. Had he not been graduated, the Student would have been eligible to obtain special education services up until the day before this 22nd birthday, this would be through April 25, 2018. (Testimony of SH, ME, Dr. A.)

60. Parent obtained legal guardianship over the Student on January 22, 2015. (Testimony of Parent; PE 68.)

61. As part of an interim mediation agreement, a vocational evaluation of the Student was conducted by Mr. B in November 2016. (Testimony of Mr. B, Dr. A; PE 4-5; DE TT.)

62. The Student's reading comprehension is considerably above grade level and he would have no difficulty reading for meaning at the junior college level. His reading and writing fluency are impacted by this slow verbal processing and response time. (Testimony of Mr. B; PE 4.)

63. The Student's math fluency is at a 2.9 grade level and his calculation skills are at an 8.8 grade level equivalent. He is only able to perform jobs that require the most basic and routine arithmetic calculation such as stocking, inventory, shipping or warehousing. (Testimony of Mr. B; PE 4.)

64. The Student has difficulty working at a competitive pace due to his slow processing speed. He has difficulty retaining and recalling verbal information and detail without visual or written cues. Note taking, tape recording, outlines, and graphic organizers would assist him in a

classroom setting and would benefit his recall and attention to verbal details. (Testimony of Mr. B; PE 4.)

65. The Student was able to compare pairs of alpha numeric data slowly but very accurately. He was able to quickly and accurately sort items by alphanumeric code in a “hands on” situation which would be important for jobs requiring sorting or matching such as stock checking, order filling, or data entry work. (Testimony of Mr. B; PE 4.)

66. Repetitive practice of job skills in which the Student has strengths and interest will assist the Student in performing at the level required for competitive employment. (Testimony of Mr. B.)

67. During the vocational testing, the Student had difficulty staying focused and attending to detail. (Testimony of Mr. B; PE 4.)

68. The Student needs the following vocational training and support: 1.) The Student will be most successful in jobs that capitalize on his verbal reasoning, data matching, and attention to language based detail. 2.) His comprehension of auditory material should be reinforced with visual cues. 3.) He needs more in-depth occupational exploration and should use computer-based career exploration programs, as well as have opportunities for job shadowing and information interviewing with employers in his areas of interest. 4.) He requires job readiness training to assist him with completing employment applications and presenting himself for interview situations. 5.) The Student demonstrates the ability to academically handle course work at the community college level. However, he would need the services of an executive functioning coach, and professional assistance to oversee his progress in each class and to foster skills in the areas of self-advocacy, time management, organizational and study skills,

assignment completion. 6.) Vocational counseling and support. 7.) Independent living and community orientation skills. (Testimony of Mr. B; PE 4.)

69. The Student did not have much, if any, vocational job skill at the time of his graduation from high school and was not prepared for competitive employment. (Testimony of Mr. B.)

70. The Student requires pre-vocational preparation and job coaching; significant accommodation to be successful in the community college setting, including case management and intense support through at least the first semester; independent living skills; money management skills; and community based work experiences. (Testimony of Mr. B.)

71. The Student prefers hands-on concrete tasks with concrete results. He prefers to work alone. He has an average interest in almost every kind of job. (Testimony of Mr. B.)

72. The Student's current employment as a caretaker for his grandmother does not fit these recommendations, as he is unable to independently perform the required job tasks. (Testimony of Mr. B, Parent.)

73. Dr. L performed a psychological evaluation of the Student in January 2016. (Testimony of Dr. L; PE 6.)

74. The Student requires support to address social deficits, social-communication impairments, adaptive behavior, problem-solving and conceptual understanding difficulties. (Testimony of Dr. L; PE 6.)

75. In order to achieve independence, the Student requires a structured vocational program – teaching employment and social skills; extensive and intensive educational supports for secondary education – assistance with note taking, organizing his approach to projects, studying routine, social supports; transportation – ability to access transportation independently; independent living skills – visual and electronic supports to reduce his reliance on adult

prompting; social opportunities with peers – he may need to be taught social skills through regular practice; sensory arousal – participation in fitness activities for optimal performance in daily activities; medication evaluation; and interaction with law enforcement and others – his disabilities cause him to present to others in a rude or as if he has a bad attitude matter.

(Testimony of Dr. L; PE 6.)

76. Given this Student's disabilities and profile, he requires a comprehensive, structured, full-time program to meet his needs. He requires an additional four to five years of schooling to address his unique educational, vocational, social, and transition needs. (Testimony of Dr. L.)

77. Given this Student's disabilities and profile, obtaining independent living, employment, and community college attendance are realistic, attainable goals for this Student. (Testimony of Dr. L, Mr. B, DA.)

78. The services of only a one-on-one tutor would not meet this Student's needs. (Testimony of Dr. L.)

79. AA is a private therapeutic day school which provides a transition program designed for students with disabilities who have completed high school requirements and are seeking some type of employment, independent living, community college, or a four-year college. It is focused on the following areas of development: vocational training, independent living, academic skills and related services, community integration. Students participate in community based employment with the assistance of job coaches, receive independent living skill training, and work on social skills with peers and employers, and how to address the issues that arise in daily life. (Testimony of Dr. L, Mr. B, KO; PE 64, 65.)

80. AA is an ISBE approved facility that meets the unique educational, vocational, social skill and transition needs of the Student. (Testimony of Mr. B, Dr. L., KO.)

81. The Student requires a one on one aide to participate in AA's transition program for the first six (6) months. He would be placed in a class with approximately ten (10) other students.

(Testimony of KO.)

82. As part of an interim mediation agreement, the District provided the Student with private one-on-one tutoring services. (Testimony of DA; PE 1-3.)

83. DA⁴ provided the Student with forty (40) hours of documented services to the Student. She provided an additional ten (10) hours in January 2017 but did not provide documentation of those services. (Testimony of DA; PE 1-3.)

84. DA worked with the Student on preparing for college entrance exams; independent living skills; job skills – completing applications, resumes, interview skills; money management skills – banking, budgeting; life skills – cooking, laundry, grocery shopping, going to banks, post offices, accessing the community via public transportation. (Testimony of DA; PE 1-3.)

85. DA spent considerable time explaining different topics to the Student including how to purchase real estate, sign a lease, read a rental agreement, tenant's rights, eviction process; how to obtain legal representation; how to establish credit, budget, save money, purchase a home, obtain a credit card; how to follow a recipe; the Affordable Care Act. (Testimony of DA; PE 1-3.)

86. DA spent considerable time showing the Student on-line materials for various topics related to daily life. (Testimony of DA; PE 1-3.)

87. DA did not assess the Student's abilities regarding his retention of the material she explained and showed to him. (Testimony of DA.)

⁴ DA is a retired remedial education teacher. She worked in that capacity for thirty-four (34) years. She was employed by the District as a special education teacher teaching English and Social Studies prior to her retirement. She currently works for the District as a consultant 10-15 hours per week. She is a pre-vocational coordinator. She is qualified to work as a job coach but has never been employed in that capacity. (Testimony of DA.)

88. She did not believe that the Student understood the concepts of self-advocacy and goal setting. (Testimony of DA.)

89. Parent and Student did not find the tutoring sessions to be helpful for the Student as he did not practice or retain the information. (Testimony of Parent and Student.)

90. Based upon the testimony of DA, Parent, Student, and the documentary evidence presented at hearing, this Hearing Officer finds that the one-on-one tutoring sessions were marginally effective. While the tutoring sessions were tailored to address the Student's identified areas of need, the delivery of the services was inappropriate given the Student's slow processing speed and need for repetition, graphic organizers and visual cues necessary for him to retain information. DA spent considerable time explaining things to the Student and covered a significant volume of information during the fifty (50) hours that she spent with the Student. However, she failed to assess the Student's ability to retain the information provided.

91. Parent, through her counsel [REDACTED], obtained an independent psychological evaluation of the Student by Dr. L. The cost for said evaluation was \$3,450.00. (Testimony of Dr. L; PE 7.)

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of Parent and 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).

In the instant matter, Parent alleges that, from October 18, 2013 to the present, (1) the District failed to reevaluate the Student in the areas of cognitive functioning; academic achievement in reading, writing, and math; social emotional functioning; vocational performance; and independent living skills, (2) the District failed to develop an IEP that addressed the Student’s academic and functional needs and which provided measurable goals, (3) the District failed to provide individualized transition services and goals based upon age-appropriate assessments, (4) the District failed to assess the Student’s academic and functional progress to identify his readiness for graduation and failed to inform Parent and Student of the Student’s rights to defer graduation to improve his transition skills. Parent further alleges that the District’s failure to provide appropriate special education services from October 18, 2013 to the present entitles the Student to compensatory education.

Reevaluation

A student with a disability must be evaluated in all areas of suspected disability. 34 C.F.R. 300.304(c)(4); *Jaccari J. v. City of Chicago School District*, 690 F. Supp.2d 687, 706. The evaluation of the student must be sufficiently comprehensive to identify all of the child’s special education and related service needs. 34 C.F.R. §300.304(c)(6). The IEP Team must consider the results of the initial or most recent evaluations of the child; and the academic, developmental, and functional needs of the child. 34 C.F.R. §300.324(a)(iii),(iv). “School authorities cannot properly address problems which they do not understand” and an appropriate

evaluation requires “a full recognition of the disability and assessment of its extent.” *See Bd. of Educ. Of Oak Park & River Forest High Sch. Dist. No. 200 v. Illinois State Bd. of Educ.*, 21 F. Supp. 2d 862, 870 (N.D. Ill. 1998). “The failure to conduct an appropriate evaluation will result in “inconsistent and inadequate programming” and thus, a denial of FAPE. *Id.*

The Parent alleges in her Due Process Complaint notice that the District failed to reevaluate the Student in the areas of cognitive functioning; academic achievement in reading, writing, and math; social emotional functioning; vocational performance; and independent living skills. The testimony and documentary evidence presented at hearing illustrate the following.

The testimony and documentary evidence are uncontroverted in this matter with respect to the reevaluation of this Student. A psychological evaluation of the Student was performed in April and May 2008 when the Student was in sixth grade. (FF # 3.) He was never reevaluated thereafter. (FF #4-5.) At the time of the Student’s high school senior year eligibility and IEP meeting, October 18, 2013, there were documented concerns regarding the Student’s performance. He was failing three of his five general education classes at that time. (FF #7.) Areas of concern were documented: Parent, teachers, and school staff expressed concerns in the areas of poor organization skills, lack of ability to focus, needs help with writing assignments, difficulty with assignment completion, limited social interaction with peers. (FF #7.) There were also documented concerns with the Student’s communicative status and social/emotional status. (FF #12.) Parent expressed concerns with the Student’s failing grades and current progress. (FF #8.) Parent had repeatedly expressed the same concerns throughout the Student’s high school career at each annual IEP meeting. (FF # 9.) Teachers and school staff conceded that a Student’s academic and functional performance can change between the Student’s sixth

grade and twelfth grade years. (FF #11.) However, the District and IEP team failed to recommend a reevaluation of the Student.

In addition, the testimony at hearing clearly reflects the District and school staff's misunderstanding of the Student's disability. The Student has autism. (FF # 2.) AG stated that she believed that his autism did not affect his school work. (FF # 18.) Teachers and staff characterized the Student as capable of self-advocacy and just "lacking motivation," needing to himself set goals and priorities in order to succeed. (FF #33-36.) However, the significant discrepancy between his verbal and performance abilities, characteristic of his autism, is the key to understanding this Student, as the discrepancy makes it appear that the Student is more capable than he actually is of completing tasks. (FF #22.) His extremely slow speed of processing interferes with this ability to retain information, complete tasks, and organize his approach to tasks. (FF #23.) This information was provided by Dr. L⁵ as a result of her evaluation of the Student during the course of these proceedings. Based upon Dr. L's evaluation of the Student, it is apparent that school staff misunderstood the Student's disability and its impact on his educational abilities. This Hearing Officer finds the testimony of Dr. L to be credible and persuasive, based upon her educational background, credentials, and hands-on, clinical experience working with young adults with autism for a majority of her career. This fundamental misunderstanding of the Student's disability ultimately led to inconsistent and inadequate programming and ultimately, to a denial of FAPE. IEP goals were not set to address the Student's deficits, as the effect of his deficits on his educational programming was unknown

⁵ Dr. L is a licensed clinical psychologist. She received a PhD in School Psychology from Indiana University in 2006. She pursued postgraduate fellowships in the Yale Child Study Center at the Yale School of Medicine on the Developmental Disorders Track. Currently, she teaches a seminar focused on adult autism spectrum disorder at [REDACTED] as an Associate Professor, Department of Psychiatry, Division of Child Psychiatry. She also trains medical students, coordinates and performs clinical psychiatry at [REDACTED]. She is an Adjunct Clinical Assistant Professor at [REDACTED] School of Medicine. She has published and lectured extensively on the topic of autism spectrum disorder in young adults. (PE 8.)

in the absence of an evaluation. (FF #26-28.) Teachers engaged in ad hoc modifications and accommodations in order to attempt to assist the Student to pass his classes, even going so far as to modify the curriculum and provide additional points for cleaning a classroom after school. (FF #15-17, 21.)

While the District aptly points out that Parent was in attendance at the IEP meeting and agreed that no further evaluations were necessary, this Hearing Officer does not find that this abrogates the District of its responsibility to evaluate this Student. Parent was not and is not an educator. She trusted the recommendations of the IEP team members and District staff and believed that they would act in the Student's best interest. (FF #6.) There exists ample evidence in the record, from the District's own witnesses, that the Student was failing classes and had difficulty with organization skills, attention and focus, writing abilities, assignment completion, and social interaction with peers. (FF #7-8.) In addition, it is apparent that the teachers and staff did not fully understand his disability, its extent, and its impact on his educational programming. This Hearing Officer finds that the Student was denied FAPE from October 18, 2013 to the present (FF #59), when the District failed to reevaluate the Student in all areas of his disability and specifically, the areas of cognitive functioning; academic achievement in reading, writing, and math; social emotional functioning; vocational performance; and independent living skills.

As a remedy for said denial of FAPE, the Parent requests reimbursement for the psychological evaluation performed by Dr. L in the amount of \$3,450.00. (FF #91.) This Hearing Officer hereby grants said relief and orders reimbursement by the District, to Parent, for the independent psychological evaluation in the amount of \$3,450.00.

IEP Present Levels & Goals

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 measureable 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). “[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 (7th Cir. 2004.) “Objective factors, such as regular advancement from grade to grade, and achievement of passing grades, usually show satisfactory progress.” *Id.* Transition services are to be “focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-secondary educational activities, including postsecondary education, vocational education, . . . independent living, or community participation.” 34 C.F.R. §300.43.

“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. In her Due Process Complaint Notice, Parent alleges that the District failed to develop an IEP designed to enable the Student to make educational progress by failing to provide measurable annual goals and appropriate related services designed to address the Student’s unique educational needs in the areas of academic instruction (reading, writing, and math), job skills training, job coaching, independent living skills instruction, transportation, post-secondary education research and application support, and interpersonal relationship development instruction from October 18, 2013 to the present. The testimony and documentary evidence presented at hearing illustrate the following.

The Student was taking all general education classes in his senior year of high school. (FF #7.) During his junior year of high school, the Student had received 900 minutes per week of specialized instruction in a self-contained special education classroom. (FF #10.) There were documented concerns by Parent of the Student’s academic performance and failing grades in three of his five general education classes. (FF #8-9.) Parent and school staff raised concerns regarding the Student’s poor organization skills, lack of ability to focus, difficulty with writing assignments, difficulty with assignment completion, and limited social interaction with peers. (FF #7.) The Student had identified deficits in the area of writing and written responses. (FF #26.) However, no IEP goals were crafted to address any of these concerns and identified areas of need. (FF # 28.) No special education services were provided to the Student to address his needs.

The Student’s IEP only contained two goals. One goal was to tour a community college. The second goal was a social work goal to address self-awareness and to prioritize and set goals. (FF #30.) The present levels of performance related to the first goal are non-existent. There are

no specific skills identified for specialized instruction related to the Student's desire to attend community college and study business. The goal was completed in one day when the Student took the college tour with twenty-five other Students. (FF #31.) District staff conceded that the Student did not possess the skills, during high school, to meet his goal of attending community college and studying business. (FF#46.) The facts illustrate that this goal was not crafted to meet the specific, unique needs of this Student and no additional goals were present to address his needs related to post-graduation community college attendance.

With respect to the second IEP goal related to social work, the goal itself was taken from the Illinois Social Emotional Learning Standards and was not modified to fit the needs of this Student. (FF #34.) The Student's present level states that the Student is "bright and able to work independently, however, he struggles to remain focused and interested in some classes. He missed numerous assignments in these classes (computer applications and graphic arts) and appears to lack motivation." (FF #35.) This lacks any specific information related to the Student's current level of social skill performance related to self-assessment and goal prioritization and does not provide insight into how the Student's disability affects his involvement and progress in the general education curriculum. (FF #35.) The benchmarks for the goal are vague and contain non-specific objectives requiring the Student to "build strengths," "identify areas for improvement," "set short term goals and make a plan for achieving it." (FF #35.) No short term goals related to the Student's areas of identified need are present, nor are there any specific plans articulated to achieve the short term goals. The only stated goal is for the Student to pass all of his classes. However, there are no measureable objectives and benchmarks to assist the Student in doing so. Simply stated, this goal was not crafted to meet the unique educational needs of this Student, was not based upon his current skill level, and was not

designed to enable and measure his educational progress in the targeted area of self-awareness and goal prioritization.

While District staff repeatedly indicated that these two goals were measurable, no one was able to articulate exactly how they were measured. (FF #39.) SW1 indicated that he assessed the Student's performance on his social work goal each time he met with him which was at least weekly. However, he did not document the results of those assessments (FF #37) and progress reports related to the Student's progress toward the goal were not provided. (FF #41.)

Based upon the above, this Hearing Officer finds that the Student was denied FAPE. His 2013-2014 IEP contained a transition goal and a social work goal that did not consider his present levels of performance, failed to consider and understand the Student's disability and its impact on his educational programming, did not contain measurable criteria with which to appropriately track the Student's progress, and therefore, were simply not designed to ensure that the Student make adequate educational progress. Due to the lack of any documented progress by the Student relative to his social work goal, we are left to assume that none was made. Further, many of his identified needs went unaddressed by his educational programming as IEP goals were not established to address those needs. With respect to his academic classes, the Student did not make educational progress as he failed three of his classes in the first quarter and only ultimately passed those classes due to impermissible modifications to his curriculum by several of his teachers and support from Parent. Parent provided significant supports to the Student, attending his classes and afterschool tutoring with the Student, and supervising his homework completion on weekends. (FF #29.)

Transition Assessment & Goals

Transition services are to be “focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-secondary educational activities, including postsecondary education, vocational education, . . . independent living, or community participation.” 34 C.F.R. §300.43. In her Due Process Complaint Notice, Parent alleges that the District failed to provide individualized transition services based upon age-appropriate assessments to prepare the Student for his post-secondary goals from October 18, 2013 to the present. The testimony and documentary evidence introduced at hearing reflected that a formal transition assessment was not conducted to develop the Student’s transition plan. The Student completed a transition interview but it was not used to develop his transition plan or services. (FF #43.) The transition services identified in the Student’s IEP as after school tutoring, social work services, tour local community college, and career planning were simply labels without any further detail and did not reflect the Student’s desire to attend community college. Further these stated services did not provide increased support in needed areas such as academic skills, organizational skills, written response skills, and assignment completion skills which would be applicable to enrollment in a community college business program. (FF #44, 61, 62.) Independent living skills were also an area of identified need. (FF #45.) However, no assessment was performed regarding the independent living skills needing development and no goals were created to support this identified area of need. (FF #45.) It was further noted that the Student had no competitive employment experience and no vocational job skills. (FF #48, 68.) Given this Student’s disabilities and profile, obtaining independent living, employment, and community college attendance are realistic, attainable goals for this Student. (FF #77.)

Based upon the above, this Hearing Officer finds that the Student was denied FAPE. The transition assessment for this Student was non-existent and the transition plan virtually non-existent. The Student expressed a desire to attend community college. However, there were no goals or transition services designed to provide increased support in the areas needed for him to pursue enrollment in a community college business program. Further, it was noted that the Student had no competitive vocational experience and he had identified independent living skill deficits. However, the District did not provide the Student with any vocational services nor did it provide any independent living skill assessment, goals, or services. The District failed to provide a transition plan, based upon age-appropriate transition assessments, to facilitate the Student's movement from school to post-secondary education, employment, and independent living and thus denied him FAPE.

Readiness for Graduation & Termination of Special Ed Services

The federal regulations implementing the IDEA require that school districts provide a FAPE to children with qualifying disabilities until the age of twenty-one. 34 C.F.R. §300.121. This obligation does not apply where the disabled student has "graduated from high school with a regular high school diploma." 34 C.F.R. §300.122. "To graduate a student with a disability under the IDEA, the student must meet the general education requirements and make progress on or complete the IEP goals and objectives. *Kevin T. v. Elmhurst Comm. Sch. Dist. 205*, 2002 WL 433061 at *14 (N. D. Ill. 2002) citing *Chuhuran v. Walled Lake Consol. Sch.*, 839 F. Supp. 465, 474 (E.D. Mich. 1993), *aff'd*, 51 F.3d 271 (6th Cir. 1995.) In her Due Process Complaint Notice, Parent alleges that the Student was inappropriately graduated from high school and special education services. The testimony and documentary evidence presented at hearing illustrate the following.

The Student was graduated from high school on May 25, 2014. (FF #50.) His graduation was based upon his obtaining the required twenty-one (21) credit hours, in the required high school courses, to be eligible for graduation. (FF #49-50.) No additional IEP meetings were held prior to the Student's graduation date to review and determine his progress toward his IEP goals and his readiness for graduation. (FF #51.) At no time throughout the Student's senior year of high school did the IEP team or school staff members ever make Parent aware, or discuss with Parent and Student, the option of graduation deferral due to the Student's disability and eligibility for special education services. (FF #52.) Parent and Student supported the Student's graduation from high school as they were unaware that there was an option to defer graduation and to continue in school working on transition goals. (FF #52-54.) Additionally, the testimony at hearing reflected that many of the school staff members seemed to be unaware that graduation deferral was an option for this Student. (FF #52.)

Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that the Student was inappropriately graduated from high school. He was graduated on the basis of the accumulation of required credits not based upon progress on his IEP goals and objectives. While he received the credit hours required for graduation, two of his teachers impermissibly modified his curriculum and expectations to allow him to pass their classes. In addition, his IEP was not reviewed prior to his graduation to determine whether his IEP goals had been met and whether he was in fact ready for graduation. As his October 2013 IEP was deficient in many areas need, if goals had been set to address all of this Student's identified needs, as they should have been, it seems highly improbable that the Student would have met his goals and been prepared to graduate in May 2014. Dr. L provided the most reliable and credible testimony estimating that the Student would require an additional four to five years

of school to be able to address his needs and enable him to live independently, obtain employment, and pursue a community college education. As indicated above, this Hearing Officer finds Dr. L's assessment reliable based upon her educational background and credentials, extensive experience working with young adults with autism, and her personal evaluation of this Student. In addition, her evaluation results were uncontroverted and were supported by the vocational evaluation results of Mr. B.

Parent further alleges that she and Student did not receive written notice of the District's intention to graduate the Student and terminate his special education services. "Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with 34 C.F.R. 300.503." 34 C.F.R. 300.102. The Illinois Administrative Code provides that a Parent may request an IEP meeting to review the recommendation that the student receive a regular diploma. 23 Ill. Admin. Code 226.50(c). "Procedural inadequacies that result in the loss of educational opportunity . . . clearly result in the denial of a free and appropriate public education." *Bd. of Educ. of Oak Park & River Forest High Sch. Dist. No. 200*, 21 F. Supp. 2d 862, 874 (N.D. Ill. 1198.) Parent's testimony at hearing that she and the Student were not provided with written notice of the decision to graduate the Student and terminate his special education services was uncontroverted by the District witnesses and the documentary evidence presented. (FF #55.) While this is a procedural violation, given the Student's academic difficulties, the District's fundamental misunderstanding of the Student's disability, failure to evaluate him, and failure to create educational programming to meet his unique needs, including vague, immeasurable IEP goals which did not consider the Student's present levels of performance, as discussed above, this Hearing Officer finds that these combined

procedural violations resulted in the “loss of educational opportunities” for the Student and therefore, deprived him of a FAPE.

This Hearing Officer further finds that the duration of the denial of FAPE extends from October 18, 2013 through the present. Parent filed her Due Process Complaint Notice on October 16, 2015. The statute of limitations period extends for two years, to October 16, 2013. While the District contends that because the Student graduated with a regular high school diploma, it no longer has an obligation to provide the Student with FAPE. However, this Hearing Officer finds that the Student was inappropriately graduated from high school for the above stated reasons. If the Student had not been improperly graduated in May 2014, he would have been eligible to receive special education services until the day before his 22nd birthday, or until April 25, 2018. Therefore, the period of denial extends from October 16, 2013 to April 25, 2018, a period of four and one-half years.

Compensatory Education

Under the IDEA, a disabled child is entitled to a free public education tailored to his special needs until the age of 21. 20 U.S.C. §1400 *et. seq.* Although the IDEA does not explicitly provide for compensatory education beyond that age, “it authorizes the court to ‘grant such relief as the court determines appropriate.’” *Bd. of Educ. of Oak Park & River Forest High Sch. Dist. 200 v. Todd A.*, 79 F.3d 654, 656 (7th Cir. 1996) (quoting 20 U.S.C. §1415(e)(2) (now 20 U.S.C. §1415(i)(2)(c)(iii))). The Seventh Circuit has recognized that, under this language, district courts have the discretion to grant compensatory education as a remedy for past violations of the IDEA. *Id.* (“[T]his authorization encompasses the full range of equitable remedies and therefore empowers a court to order adult compensatory education if necessary to cure a violation”.) *Evanston Cmty. Consol. Sch. Dist. No. 65 v. Michael M.* 356 F.3d 798, 803

(7th Cir. 2004). “Compensatory awards should aim to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA.” *Petrina W. v. City of Chicago Public School District*, 2009 WL 5066651, at *3 (N.D. Ill. Dec. 10, 2009) citing *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 365 U.S. App. D.C. 234 (D.C. Cir. 2005.)

As discussed above, this Hearing Officer has determined that this Student was denied FAPE when the District failed: (1) to reevaluate the Student; (2) create an IEP with measurable goals, objectives and benchmarks designed to address the Student’s unique needs and to enable him to make educational progress; (3) to conduct a transition assessment and create individualized transition services. The IEP goals and transition services needed to address the Student’s academic instruction as well as vocational skills training, independent living skills, and transition to post-secondary education. As vocational skills training, independent living skills, and transition services were not provided to the Student during his senior year of high school or thereafter, with the exception of fifty (50) hours of private tutoring arranged by the District during these proceedings (FF #83), the length of the FAPE denial would extend from the Student’s senior year of high school to, at the outside, April 25, 2018, the day before his 22nd birthday.

As a remedy for the FAPE denials, Parent requests that this Hearing Officer rescind the Student’s diploma and restore his eligibility for special education for one additional year.⁶ Parent further requests two years of compensatory education services thereafter to place the Student in the position he would have been in but for the FAPE denial. Parent requests that the Student be placed at AA for three (3) years where he would receive a comprehensive educational

⁶ The Student is currently one month away from his 21st birthday. Restoring his eligibility for special education services would allow him one additional year, until the day before his 22nd birthday, of those services.

program including vocational skills, social skills, academic skills, independent living skills and physical education according to a transition plan with goals designed to meet his unique needs. Parent further requests that the Student be awarded a one-on-one aide for the first six (6) months of his attendance at AA, with a plan to reduce his one-on-one support thereafter. Parent also requests that this Hearing Officer order the District to pay for the Student to enroll in a driver's education course or to be assessed for his readiness for a driver's education course.

This Hearing Officer declines Parent's invitation to rescind the Student's high school diploma. It is this Hearing Officer's understanding of the law that compensatory education allows for an award to place the Student in the position he would have occupied but for the District's denial of FAPE. This is irrespective of whether or not the Student has received his high school diploma. As this Student desires to pursue at least some level of community college education and rescission of his diploma is not required for this Hearing Officer to award the appropriate level of compensatory education, this Hearing Officer finds that to rescind the diploma is unnecessary and would impede the Student's progress in pursuing his desired community college experience. Therefore, the Student's diploma will stand as awarded on May 25, 2014.

This Hearing Officer declines to award compensation for the Student's enrollment in a driver's education course or compensation for an assessment to determine his readiness for driver's education. A driver's education course was not a graduation requirement for this Student and had he participated in driver's education in school, it would have been at his own or his Parent's expense. (FF #56.) In addition, participation in driver's education may not be safe or advisable for this Student due to his slow processing speed. (FF #57.) As completion of a driver's education course was not a graduation requirement denied to this Student, this Hearing

Officer finds that there is no basis for her to award such relief. Parent's request for compensation for a driver's education course or assessment for the Student's readiness for such a course is hereby denied.

In order to provide an appropriate compensatory education award, this Hearing Officer must determine where the Student was functioning prior to the start of the denial of FAPE, his estimated level of progress, to help determine where the Student would have been but for the denial, and where the Student would have been but for the denial of FAPE. *See Kevin T. and Reid.* With respect to the denial of vocational, transition, and independent living goals and skills, this Hearing Officer finds that the Student possessed virtually no skills in these areas at the commencement of his senior year of high school. (FF #69-70, 74-76.) This conclusion is based upon the evaluations and testimony of Dr. L and Mr. B⁷. Both personally evaluated the Student and reviewed all available District records related to his high school career. This Hearing Officer finds the testimony and evaluations of both to be credible and persuasive based upon the educational backgrounds of these individuals, their clinical experience, and their personal assessments of this Student. As stated previously, none of these deficit areas were addressed in the Student's October 18, 2013 IEP or in any transition plans. Therefore, the Student could not have made any progress in these areas during his final year of high school. The Student has not been in attendance at school or in any vocational or transition programs since his graduation from high school. (FF #1.) Based upon this, the Student would not have made any progress in these areas after his departure from high school. With respect to the Student's academic functioning, that is more difficult to determine. This difficulty is caused by the District's own design in failing to evaluate the Student during any point in his high school career. It is

⁷ Mr. B is a vocational evaluator and counselor. He holds a Master's Degree in Vocational Rehabilitation Counseling and has been employed in that capacity for forty-four (44) years. (PE 4-5.)

undisputed that the Student's reading comprehension is above grade level, and was so at the time of his senior year IEP meeting. (FF #61.) However, reading and writing fluency were impacted by his slow verbal processing. At the time of Mr. B's evaluation of the Student, his math fluency was at a 2.9 grade level and his math calculation skills were at an 8.8 grade level equivalent. (FF #62.)

This Hearing Officer relies upon the testimony of Dr. L and Mr. B. Both evaluators believe that this Student can attain full-time employment, the ability to live independently, and some level of community college education. This Hearing Officer finds that the Student would have attained these skills had he not been inappropriately graduated from high school and had his special education services not been terminated. Had these events not occurred, the Student would have been placed in an appropriate transition program, with appropriate goals and services, designed to meet his unique needs based upon his disability and he would have acquired the skills necessary for vocational employment, independent living, and post-secondary education at a community college.

The District maintains that any award of compensatory education should be reduced by the amount of one-on-one tutoring provided to the Student, at District expense, during these proceedings. While DA, the District provided tutor, provided fifty hours of services to the Student in his identified areas of need (FF # 83-84.), there was no evidence presented reflecting a benefit to the Student from this instruction. While DA spent considerable time explaining various topics to the Student and showing him on-line materials, she did not conduct any assessments to evaluate his progress in the areas of instruction or his retention of this information. (FF #87.) It is unclear whether DA fully understood the Student's disability and its impact on his progress and educational programming as she did not have any evaluation data and

did not perform any evaluations herself. (FF #83-88.) The Parent and Student did not find the tutoring session helpful and the Student did not practice or retain the information. (FF #89.) Based upon this, the Hearing Officer finds the fifty (50) hours of District provided tutoring to be marginally effective at best. As assessments were not performed to verify the educational benefit to the Student or to document Student progress made, this Hearing Officer finds that there is no basis to reduce a compensatory education award by the number of tutoring hours provided.

Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that AA is an appropriate placement for this Student to receive the vocational, social, independent living and post-secondary education skills denied. (FF #79.) The Student requires a structured vocational program – teaching employment and social skills; extensive and intensive educational supports for secondary education – assistance with note taking, organizing his approach to projects, studying routine, social supports; transportation – ability to access transportation independently; independent living skills – visual and electronic supports to reduce his reliance on adult prompting; social opportunities with peers – he may need to be taught social skills through regular practice; sensory arousal – participation in fitness activities for optimal performance in daily activities. (FF #68-70, 75-76.) AA’s transition program is a full-time comprehensive program which would address this Student’s needs and deficits. Dr. L and Mr. B, as a result of their respective evaluations, concur in this recommendation. This Hearing Officer finds the testimony of both to be credible and persuasive. Placement of the Student at AA is appropriate and will allow him make the educational progress that he was denied in his specific individualized areas of deficit.

The District requests that any compensatory education award should consist of extended one-on-one tutoring provided by DA. However, this Hearing Officer believes that would be inappropriate and would not serve to place the Student in the position he would have been in had he not been denied FAPE. First, a full-time comprehensive program to address academic, vocational, independent living, social, and post-secondary education deficits is required for this Student. (FF #70, 76.) DA cannot provide such a program. Her services are contracted through the District for 10-15 hours per week. (FF #83.) While she is qualified for employment as a job coach, she has never been employed in this capacity. (FF #83.) In addition, she is unable to provide peer interaction and peer social skill development in a one-on-one environment. Further, as indicated above, she provided the Student with an overwhelming amount of information and did not assess his progress in deficit areas and did not assess his retention of the material. Therefore, her tutoring sessions were marginally effective at best. (FF #89-90.) For these reasons, this Hearing Officer does not believe that continued one-on-one tutoring sessions provided by the District appointed tutor would serve to meet the needs of this Student and place him in the position in which he would have been had FAPE not been denied.

The remaining question is the duration of the compensatory award and placement at AA in order to compensate the Student for the denial of FAPE and to provide him with the educational benefits that likely would have accrued had there not been any denial. Dr. L estimated that the Student would require an additional four to five years of schooling in order to attain the appropriate level of vocational, independent living, social, and post-secondary education skills to address his needs. (FF #76.) AA is a private therapeutic day school with a highly structured program specifically designed to meet the vocational, independent living, social, and post-secondary education needs of students with disabilities similar to this Student's.

In order to attend AA, the Student will require a one-on-one aide for the first six (6) months of his enrollment. This one-on-one instruction will provide the Student with a very intense level of services which he would not have received had he remained in a transition program after high school. Further, the class size at AA would be approximately eleven (11) students. The Student would be assigned a case manager and a job coach, and would receive more focused instruction in a highly structured environment. (FF #79-81.) This Hearing Officer finds that the level of intense instruction provided at a private therapeutic day school, such as AA, would provide the Student with supports and services at a much higher level of intensity than the Student would have been provided had he remained in a District transition program. Due to the higher level of intensity and structure, along with the award of a one-on-one aide for the first six (6) months (to be faded thereafter as appropriate), this Hearing Officer determines that the Student will be enrolled at AA for a period of two (2) years. Based upon the evidence presented at hearing, this Hearing Officer finds that this level of compensatory education will serve to place the Student in the position he would have attained had he not been denied FAPE as indicated above.

ORDER

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

Parent's requested relief is granted as follows:

The District is Ordered as follows:

1. To reimburse Parent for the psychological evaluation conducted by Dr. [REDACTED] in the amount of \$3,450.00.
2. To place the Student at [REDACTED] in the Transition Program with a one-on-one aide, as compensatory education. The Student shall be placed at [REDACTED] for a period of two years. The Student's program at [REDACTED] will consist of the following:

- a. A structured vocational program that will allow for job skills training, community work experience, a job coach;
- b. A structured social skills development program;
- c. Goals for increasing the Student's academic fluency, writing, math, social communication, peer social interaction, and executive functioning;
- d. Transition goals for career discovery and job readiness skills;
- e. A physical education program;
- f. Transition goals for the acquisition of independent living skills;
- g. Transition goals for preparing to apply and enroll in community college;
- h. A plan for fading adult support, including the Student's one-on-one aide, after six (6) months at [REDACTED];
- i. Transportation to and from said program.

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

Illinois State Board of Education
Program Compliance Division
100 North First Street
Springfield, IL 62777-0001

NOTICE OF RIGHT TO REQUEST CLARIFICATION

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

NOTICE OF RIGHT TO APPEAL

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

Dated: March 27, 2017

/s/ Janet K. Maxwell-Wickett
Janet K. Maxwell-Wickett,
Impartial Hearing Officer
[REDACTED]
[REDACTED]
Phone: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]

APPENDIX A

[REDACTED] v. [REDACTED]

Case No: 2016-0152

Former Student	[REDACTED]
Attending School	[REDACTED]
Child's Parent (Mother)/Petitioner	[REDACTED]
Joint Witnesses:	
Caseload Manager/Special Ed Teacher	[REDACTED] (CM)
School Counselor	[REDACTED] (SC)
School Social Worker	[REDACTED] (SW1)
General Education Teacher – English	[REDACTED] (PJ)
General Education Teacher – Graphic Arts	[REDACTED] (AG)
General Education Teacher – Culinary Arts	[REDACTED] (BM)
General Education Teacher – Computer Apps	[REDACTED] (CT)
Special Education Division Coordinator	[REDACTED] (ME)
Director of Special Education	[REDACTED] (Dr. A)
Tutor/Special Education Teacher	[REDACTED] (DA)
Prairie State College, Dean	[REDACTED] (FS)
Parent	[REDACTED]
Former Student	[REDACTED]
Parent Witnesses:	
Acacia Academy Transition Teacher	[REDACTED] (KO)
Clinical Psychologist, Clinical Director	Dr. [REDACTED] (Dr. L)
Vocational Evaluator and Counselor	[REDACTED] (Mr. B)
District Witnesses:	
School Social Worker	[REDACTED] (SW2)
Requested Placement	[REDACTED] (AA)

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]

Student,

Case No: 2016-0152

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]

School District.

CERTIFICATE OF SERVICE

I, Janet Maxwell-Wickett, certify that on March 28, 2017, copies of the *Final Determination & Order* were served upon the following persons in the manner indicated:

Sent Electronically via Email Only

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Sent Electronically via Email Only

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ILLINOIS STATE BOARD OF EDUCATION

Sent Electronically via Email Only

Andrew Eulass
aeulass@isbe.net

Wanda Schoneweis
wschonew@isbe.net

Dated: March 28, 2017

/s/ Janet K. Maxwell-Wickett
Janet K. Maxwell-Wickett, Hearing Officer

[REDACTED]

[REDACTED]

Phone: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]