

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

■■■■ a minor, by and through
his Parent(s),

Petitioners,

- against -

Case No. 2016-0459

Chicago Public School District #299, Chicago Public Schools #299
Jennifer A. Leisner
Impartial Due Process Hearing Officer

Respondent.

FINAL DETERMINATION AND ORDER

Jurisdiction

This proceeding was invoked in accordance with the *Individuals with Disabilities Education Act* (“*IDEA*”), as amended in 2004, codified in 20 U.S.C. §§1400, *et seq.*, the *Illinois School Code* (“*School Code*”) 105 ILCS 5/14-8.02a and their respective implementing regulations: 34 C.F.R. §§ 300.01 *et seq.*, and 23 Ill. Admin. Code §§226.600, *et seq.*

Brief Procedural Background

Petitioners are the Parents of ■■■■. (“Student”), a student residing within the boundaries of the Chicago Public School District #299 (“School District”). On June 3, 2016, the Parent filed a due process complaint notice (“DPCN”) against the District.¹ On June 13, 2017 the School District filed its Response to the

¹ At hearing, the family advocate (Ms. D) testified credibly that the Parents and the Student had always believed he was going to a trade college upon graduation from High School. (Ms. D Testimony) She further explained that during the Student’s senior year the Parents and the Student learned/realized for the first time, that the Student did not have the requisite skills to

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Parent's DPCN. The Parties held a Prehearing Conference on August 23, 2016 at which time Parent's counsel requested leave to file an Amended Complaint. On September 6, 2016 the Parents filed their "First Amended Complaint", which was 88 pages long. The School District filed a Response on September 16, 2017. The Prehearing Conference was continued by agreement of the parties until December 9, 2017; and was continued again to January 23, 2017 in order to allow the parties to pursue settlement.

On January 23, 2017 Prehearing Conference the parties informed the Hearing Officer of their plans to hold an IEP meeting on February 2, 2017. The Hearing Officer continued the Prehearing Conference to February 8, 2017 (without extending the 45 day deadlines). On February 8, 2017, the Parent filed a request for an Independent Educational Evaluation ("IEE"); and, on the same day the School District filed a counter-DPCN in response. On February 10, 2017 the School District filed a "Motion To Preclude" all claims in the Parent's First Amended Complaint that fell outside the two (2) year statute of limitations. The cases were consolidated on February 24, 2017. On February 27, 2017 the Student/Parents filed a Response to the counter-DPCN. Due to scheduling difficulties, the evidentiary hearing on the School District's Motion was not completed until May 8, 2017; and, the Hearing Officer issue a ruling on May 12, 2017 striking the FAPE claims falling outside of the statute of limitations period, while allowing the Parent to present evidence outside of the statute of limitations period for her claim of compensatory education only.

attend a trade college. (Id.) She explained that the Student's mother has a disability that affects her [REDACTED], that his step-father has [REDACTED]. (Id.) The original DPCN was filed to invoke stay-put and to prevent the Student's graduation from High School. (DPCN)

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The Prehearing Conference was reconvened on May 16, 2017 and completed on August 30, 2017. A Prehearing Report and Order was issued and hearing dates were set for September 25-29, and October 4, 2017 at [REDACTED], 1450 [REDACTED].

Issues

The issues being presented for determination are as follows:

- a. *Whether, from the time period of June 3, 2014 to the present the School District properly evaluated the Student in all suspected areas of disability; and, whether the Parent is entitled to an Independent Educational Evaluation at public expense?*
- b. *Whether, during the Statutory Period, the School District properly observed its procedural requirements under the Individuals with Disabilities Education Act (“IDEA”); and, if not, whether an such procedural violation denied the Student a FAPE, significantly impeded the Parent’s participation in the decision-making process regarding the provision of FAPE to the Student, or denied the Student an educational benefit?*
- c. *Whether, during the Statutory Period, the School District appropriately designed the Student’s IEPs in the following areas:*
 - . *by providing accurate present levels of performance?*
 - i. *By addressing all areas of suspected disability?*
 - ii. *By providing assessment, goals and related services in the area of speech/language and voice?*
 - iii. *By providing appropriate goals and special education services in reading?*
 - iv. *By providing appropriate goals and special education services in written language?*
 - v. *By providing appropriate goals and special education in science and math?*

At present, the Student (an engaging and extroverted young man), attends a transition program and presents with the following disabilities: specific learning disorder with impairment in reading; specific learning disorder with impairment in mathematics; specific learning disorder with impairment in written expression; language disorder; attention deficit hyperactivity disorder (“ADHD”); developmental coordination disorder; mild vascular neurocognitive disorder; central auditory processing disorder (“CAPD”); and a voice disorder.² (Id; P #50, 51, 61). (Ms. B Testimony, Dr. T Testimony, Ms. W Testimony and Ms. R2 Testimony).

Educationally, the Student has been found eligible for special education and related services under the following categories since he qualified for an IEP in elementary school: other health impaired (“OHI”); learning disabled; speech/language. Over the years (and as recently as February 2017) the Student’s IEP team considered (and rejected) that he may be eligible under the categories of autism and intellectual impairment. (P# 53; Testimony of Dr. T, Ms. S3, Ms. S4, Ms. C, and Dr. D). Specifically, the Student’s evaluators (both public and private) noted that his innate language difficulties made it difficult to determine a reliable IQ score, or to definitively place him on the autistic spectrum. (P #52, Dr. T Testimony, Ms. B Testimony, Dr. W Testimony).

² The Student has a clinical diagnosis of [REDACTED], [REDACTED]. Although noticeable, the condition does not affect his articulation (P# 61) or his ability to complete speaking assignments in school. (P #79) The Student testified at hearing and the Hearing Officer concludes that his [REDACTED] does not impair his intelligibility or his ability to access his curriculum. (Student Testimony, Ms. W, Ms. G, Ms. D, Ms. S2, Mr. I, Ms. M1 Testimonies)

School District records indicate that the Student's IEP Team knew that he had a significant history of developmental delay since birth due to [REDACTED] and a diagnosis of [REDACTED]. Further, school records indicate that the Student has always tested in below average ranges in most areas of academic functioning since early primary school (P. # 4, 5A, 12-21, 24-26, 30-33, 35-39, 43-46, 53-54, 56,59,62-67)³.

1. School District Evaluations.

For purposes of this ruling, the relevant time period is from June 3, 2014 to the present (“Statutory Period”). As has been fully explained in this Hearing Officer’s previous ruling on the School District’s Motion to Preclude, evidence of events prior to the Statutory Period are only being considered insofar as they impact the need for, and extent of, compensatory education services.⁴ The first relevant school year for purposes of the instant matter is the 2014-2015 school year. The IEPs for the years of 2014 to February 2017 were based upon required triennial re-evaluations conducted in 2013 (prior to the Statutory Period). To the extent that the Student’s IEP teams relied on these re-evaluations ~ and not update them sooner ~ a brief summary is in order:

Dr. L2 conducted the Student’s psychological evaluation on October 11, 2013. (P. #35). She reported that the Student was receiving 1150 minutes per week in a self-contained setting and he was getting classroom grades of [REDACTED] and [REDACTED] in his

³ The Hearing Officer has reviewed these documents, which mostly comprise School District records dated prior to the Statutory Period. The Hearing Officer only reviewed those documents outside of the Statutory Period for historical purposes and in order to assist her in deciding if (and how much) compensatory education would be warranted for the Student.

⁴ *See, Reid v Dist. Of Columbia, 401 F.3d 516 (D.C. Cir 2005).*

special education classes with a modified GPA of [REDACTED]. She did not test for an intellectual impairment, as the IEP team did not identify that as an area for re-evaluation (Dr. L2 Testimony, SD #5). However her achievement testing of the Student indicated academic skills consistently in the very low range, with the Student scoring *no higher than* the 6th percentile in any tested area of academic achievement. (P. #35; Dr. L2 Testimony). She noted that the Student “required greater attention to his phoneme-grapheme relationships” in reading. Also, she notes that the Student expressed to her that he “worries about his grades, his performance in math, getting to class on time and maintaining his organization” and that these worries “impair his ability to concentrate”. (Id). Overall, she describes the Student in his 10th grade year as functioning academically at an early grade school level, and expressing social/emotional deficits in his daily living skills that put him behind his peers. (Id.) Dr. L2’s 2013 re-evaluation is the only one listed on his October 2013 IEP. The Student was not re-evaluated between 2013 and mid-2017. (P #37, 38, 43, 53). Likewise, the Student was dropped from Speech/Language services in 2003 and hadn’t been re-evaluated in that domain until mid-2017. (P #62-67, Dr. L1 Testimony).

The Student’s next set of triennial evaluations were conducted in late 2016, and considered at an IEP meeting on February 2, 2017. (P #53). In addition to a nursing evaluation⁵, the following evaluations were given⁶:

⁵ The Student’s attorney has withdrawn the claim that the nursing evaluation was not appropriate; therefore, it will not be summarized in this ruling.

⁶ The Hearing Officer has reviewed all of the School District evaluations at issue and has concluded that all of them were given in English (which is the main language of the Student), that they used appropriate editions of all standardized assessments, that there were no apparent scoring errors, and that the School District evaluators used a variety of information (including, but not limited to Student interviews, Parent interviews, Teacher interviews, classroom observations and record reviews.). (P#35, 45, 46, 51, 56)

1. *Vision*: the Student's vision was 20/20; however, the evaluator noted that he was privately diagnosed with a vision disorder that could be improved with private vision therapy. (SD #37)
2. *Hearing*: The Student's hearing acuity was found to be normal. He was given audiological testing as well as testing central auditory processing evaluation. He was diagnosed with a CAPD, with noted deficits in auditory figure ground, closure, binaural integration and binaural separation. The Student was found to have a decoding deficit (poor discrimination of fine acoustic differences in speech) which present as a person who can't hear, didn't hear or misheard spoken instructions. (P#51)
3. *Occupational Therapy*: the Student was given two Visual Motor Integration ("VMI") subtests by the School Occupational Therapist⁷ and obtained scores below his same-aged peers. She noted that the Student's handwriting is legible. (P#56)
4. *Speech/Language*: the Student was given the Comprehensive Assessment of Spoken Language ("CASL") the following areas: Synonyms, Grammatical Judgment, Non-Literal Language, Meaning from Context and Pragmatic Judgment. (P #45).⁸ This evaluation report confirmed the presence of [REDACTED] and below average scores in expressive language, comprehension, metalinguistics, pragmatic language, making inferences, determining solutions, problem solving, interpreting perspectives, and transferring insights. Some of the subtests indicated performance in the low average to average range, but overall the test results confirm a Language Disorder. (Id.)

⁷ When the School District was conducting its reevaluations of the Student, the private evaluations were ongoing. Moreover, the Student's attorney attended the domains meeting setting forth the scope of the re-evaluations. (SD #25). Several of the School District evaluators indicated that they were aware of the Student's private evaluations, and were influenced by the private evaluations as to the number of tests and the areas of testing they would perform, in order not to duplicate results, jeopardize their test results or unnecessarily stress the Student. (Ms. W, Ms. R, Ms. G, Dr. D Testimonies) For example, the School OT, Ms. R testified that she relied on the VMI core test given by the Student's outside evaluator, Dr. T. (Ms. R Testimony).

⁸ The Student's private speech/language evaluator Dr. L1 reviewed the protocols for the School District's 2016 speech evaluation and testified that they were scored correctly. Although the School District speech/language evaluator did not provide a composite score, Dr. L1 was able to calculate it. Dr. L1 testified that she did not have a problem with the CASL protocols. (Dr. L1 Testimony)

5. *Psychological*: The School District psychologist administered several tests: the Wechsler Individual Achievement Test (WIAT-III), the Wechsler Abbreviated Scale of Intelligence (WASI-II)⁹, the Vineland Adaptive Behavior Scales II, the Behavior Inventory of Executive Functioning Skills (BRIEF) and found the Student's functional IQ scores, achievement testing, skills to be consistently within the Extremely Low to Borderline range. Her testing also found that overall the Student's scores on the BRIEF were in the Average range. (P #46, Ms. W Testimony)

6. *Social Work*: The School District social worker completed a record review and interviews of the Student, his teachers and Parent and concluded that the Student's socialization occurs primarily outside of his current placement¹⁰ at home with family and family friends and in the community. It notes that the Student has anxiety relating to his disabilities. The social work evaluation notes that the Student found his high school classes harder for him, and that he enjoys his vocational transition program at ICRE. He noted that the Student assists with his mother, who is also [REDACTED] and recommends that the Student continue with a vocational transition program. No mention was made about the Student's inability to self-advocate. (SD #30).¹¹

⁹ The Student's private psychological evaluator, Dr. T, took issue with the fact that only the abbreviated WASI-II was given for the Student. (Dr. T Testimony). However, Ms. W, the School District psychologist testified that she was aware of the Student's concurrent psychological evaluation by Dr. T and did not want to duplicate the testing (although she did read Dr. T's evaluation report prior to finalizing her own.) (Ms. W Testimony). Dr. T also commented that from reading the protocols it appeared that the School District psychologist failed to give the word reading subtest in the right order in order to determine the Student's reading skills. (Dr. T Testimony). At her testimony, Ms. W was able to demonstrate that she gave the correct reading subtests in the right order. (Ms. W Testimony, P#55). Dr. T did not find any scoring errors on the School District's 2016 psychological evaluation. (Dr. T Testimony).

¹⁰ The Student currently attends the [REDACTED] in [REDACTED] and has been attending this placement since he graduated from [REDACTED] in 2016. (See, S.D. 30, Mr. I Testimony, Student Testimony).

¹¹ At hearing, there was evidence that the Student is a shy man and also that he is extroverted when he feels comfortable with people. (Ms. D Testimony). The Student's special education teacher described him as "popular" with the other student's in his class and that he was friendly to everyone. (Mr. P Testimony). More importantly, Mr. P testified that during the Statutory Period, he believed that the Student was capable for asking for help when needed. (Id.) At hearing, the Hearing Officer asked several pointed questions to the Student and he was able to answer them honestly, even correcting the Hearing Officer's understanding on occasion. (Student Testimony)

7. *Assistive Technology*:¹² The Student's Assistive Technology ("AT") Evaluation found that the Student would benefit from AT in the school setting to improve his written expression, spelling, sentence organization and overall writing skills. (P#42).

At hearing, all of the school-based evaluators testified about their individual credentials in their respective fields, with no objection from the Student's attorney. . (Ms. W, Ms. R, Ms. G, Dr. D Testimonies). They all testified that their necessary licensures are up to date, and that the standardized assessments were age-appropriate for the Student and used commonly in their individual areas of expertise. (Id.) They testified that they followed the instructions for those assessments, that the assessments they chose were sufficiently comprehensive and that they scored them correctly. (Id.) The Parent's independent evaluators testified that in their opinion, the school-based evaluators did not give comprehensive enough assessments (e.g., using a portion of a test instead of giving a full battery), or gather enough detailed information to aid educational planning. (Dr. B, Dr. L1, Dr. T Testimonies).

2. Independent Evaluations.

The Student was evaluated in 2016 by private evaluators, after the DPCN was filed. These evaluations were in process when the School District evaluators were completing the triennial evaluations in 2016. (Dr. T Testimony, Ms. W Testimony). When the IEP Team met in February 2017 to consider the School District's evaluations, several of the private evaluators presented drafts of then-incomplete evaluations to the School District evaluators, many of whom

¹² The Student's Assistive Technology evaluation was completed after the February 2017 IEP meeting. (P #42) The Student's current case manager confirmed that there has not been an IEP since 2017 to discuss either the AT evaluation reports or any of the private evaluation reports. (Ms. S1 Testimony).

mentioned, and even integrated, the preliminary findings of the outside evaluators. (P #48, SD #21, 22)¹³. The Student made a request for an Independent Educational Evaluation on February 8, 2017 after the School District evaluations were completed, but before all of the private evaluations had been finalized. To date, the School District has not convened an IEP meeting to consider the findings of the private evaluators. (Ms. S1 Testimony). The Student is seeking public payment for these private evaluation reports. (Second Amended DPCN).¹⁴

The results of the private evaluations are summarized as follows.

1. *Educational Consultation by Dr. B.* Dr. B is a clinical psychologist who lives in California. (P #11) She was certified as an expert in psychology and testified about her familiarity with a number of testing tools used by the School District and private evaluators. (Dr. B Testimony). In her report she indicated that she had read the Student's educational records and his outside evaluation reports. She had interviewed the Student by phone in September 2016, interviewed his mother in March 2017 and observed him in the community days before hearing. (P#10, SD #6 Dr. B Testimony)¹⁵ Dr. B did not administer any evaluations to the Student or to his mother. (Id). Dr. B concluded that the Student was aware of his poor academic skills and his falsetto voice; and, that he wanted to improve them. She noted that he is interested in getting training for a job and that he has a strong interest in computers; and perhaps attending community college. As to the Student's mother, Dr. B noted that she has a disability herself that leaves her "unable to make well-informed, meaningful decisions about her son's educational progress" and that she does not question the

¹³ Several of the Parent's exhibits, such as Dr. T's evaluation report, still have a watermark "DRAFT" on them, despite the fact that the examiner has testified that they are the final reports. (P #48, Dr. T Testimony).

¹⁴ Invoices for only two evaluators were offered into evidence: Dr. T (P #58) for \$4300.00 due to Dr. T; and Dr. L1 (P #68) for \$1200.00 reimbursement to the Student's attorney. No other documents proving payment or monies due were proffered by the Student's attorney.

¹⁵ Both the School District and the Parent entered Dr. B's report into evidence. The Hearing Officer will cite to both, even though they are duplicates of each other.

judgment of medical or educational professionals regarding her son.
(Id).¹⁶

During her testimony, Dr. B stated that in her opinion the Student needs the following services to remediate his academic and functioning skills: a structured multi-sensory reading program (such as LMB or Wilson) to target reading decoding skills for two (2) hours/day for up to five (5) days/week for one academic year; math remediation at LMB for 2 hours/week for one academic school year; the use of FastForward (to be used independently) to address his CAPD for one (1) hour/day three (3) times/week for one hundred (100) hours; counseling services to address his anxiety issues and to work on his public transportation skills for twenty-five (25) sessions of one hour each; and vocal therapy to address his falsetto voice for sixty (60) minutes/week for twelve (12) weeks with a speech/language therapist.

2. *Neuropsychological Evaluation of Dr. T.* Dr. T is a clinical psychologist who evaluated the Student in June of 2016. Dr. T administered the following evaluations to the Student (in addition to doing a medical and educational record review, behavioral observations and interviews of the Student and his Parent): Beery-Buktenica Developmental Test of Visual Motor Integration (“Beery VMI”), Clinical Evaluation of Language Fundamentals (“CELF 5”), Comprehensive Test of Phonological Processing (“CTOPP-2”), Delis-Kaplin Executive Functioning System (“D-KEFS”), Kaufman Test of Educational Achievement (“KTEA-3”), Texas Functional Living Scale (“TFLS”); Wechsler Adult Intelligence Scale (“WAIS-IV”); Wide Range Assessment of Memory and Learning (“WRAML-II”), and Wide Range Assessment of Visual Motor Abilities (“WRAVMA”). (P #48)

In her evaluation report¹⁷, Dr. T notes that the Student’s IQ score is in the low range of intelligence, but that his functional capabilities “significantly supersede his measure global IQ, but are hindered by specific and addressable underlying

¹⁶ Although the Hearing Officer finds Dr. B a credible psychological expert for purposes of discussing the Student’s school records, public and private evaluation reports, and overall educational profile; this Hearing Officer notes that Dr. B’s conclusions regarding the Student’s mother were based upon one telephone call and meeting her for one day prior to hearing (Dr. B Testimony). There was no evidence presented that Dr. B either evaluated the Student’s mother or reviewed any of her medical records. Therefore, this Hearing Officer notes the comments regarding the Student’s mother, but cannot give them the same weight as her testimony regarding the Student.

¹⁷ Dr. T’s evaluation report states that the Student’s birthdate is [REDACTED]. The Student’s actual birthdate is [REDACTED]. (P. #48; see, e.g., P#53). The School District’s psychologist has raised the concern that Dr. T would need to have the correct age of the Student in order to make sure she was giving the correctly-normed evaluation instruments. (Ms. W Testimony). However, Dr. T does correctly note that the Student’s grade is 12th grade and noted that he was a [REDACTED] year old male (which was correct when the testing was administered). The Hearing Officer notes there is no evidence that Dr. T did not give the correctly normed tests, and the Hearing Officer finds the incorrect birth date to be the result of a clerical error. (P #48).

learning disorders.” (Id. Dr. T Testimony). Dr. T concluded that the Student’s ability to perform on standardized tests was directly related to whether there was a language or speed component. (Id.) She concluded that the Student was eight to ten years behind his peers in reading, language and mathematics, and diagnosed him accordingly with a Specific Learning Disorder with impairment in reading, written expression and mathematics. (Id.) She also noted that the Student is impaired in his ability to process visual information, and that he has visual special deficits. (Id.) His difficulties with fine motor movement and visuomotor integration impairs his fine motor dexterity and speed and she diagnosed him with Developmental Coordination Disorder.

Dr. T also noted that the Student presents with brain injuries at birth and infancy, that he has ADHD, and an overall Language Disorder. She recommends in her report that the Student needs (and should have gotten) speech/language therapy, to remediate language weaknesses, academic remediation in reading, math and written expression (through a multisensory program such as Lindamood Bell), occupational therapy, weekly social work and work with a job coach to help with vocational planning (Id.). She also recommended that the Student be re-evaluated after one year of intensive remediation to determine his progress. (Id).¹⁸

3. *Dr. F Auditory Evaluation.* Dr. F is a board certified audiologist. (P #79, Dr. F Testimony). On September 12, 2017 she administered an audiological evaluation on the Student and diagnosed him with a “marked deficit in central auditory discrimination” (that is, a deficit in the ability to analyze and extract fine acoustic information). (P #50) She stated that the Student will process auditory information slowly, and have fatigue that will adversely affect comprehension, attention, memory, and overall learning. (Id., Dr. F Testimony). She also stated the Student may experience secondary psychological issues such as anxiety and depression from being habitually uncertain if he is hearing people correctly. (Id.) She recommends rehabilitative aural therapy for one hour/week for 30 weeks to improve perceptual and related learning skills (which can be administered by an audiologist or speech language therapist). She also recommended use of computer-assisted auditory training program for 30 minutes daily (for the Student to use on his own) to enhance discrimination skills. (Id.).

¹⁸During her testimony, Dr. T stated that specifically, she would like to see the Student receive the following as remediation services: speech/language services (for both remediation of his falsetto voice and for developing expressive/receptive language skills) for 60 minutes per week (“mpw”) for 2 years; Lindamood Bell (“LMB”) or other multisensory instruction (such as Wilson or Orton Gillingham) to address the Student’s deficits in reading, written expression and mathematics for four (4) hours/day for a minimum of six (6) weeks (to be delivered by a qualified special education teacher or a LMB trained teacher); occupational therapy for 60 mpw for nine (9) months; social work services for 60 mpw for one school year; public transportation training; more intensive job coaching; a full neuropsychological reevaluation in 12 months after starting these programs to measure any progress. (Dr. T Testimony)

4. *Dr. L1 Speech/Language Evaluation and Observation.* Dr. L1 is a clinical speech/language therapist who evaluated the Student in August 2016 and observed him in June 2017 at a summer vocational program. (P#60, 61). As part of her evaluation in 2016 Dr. L1 administered the following assessments: the Peabody Picture Vocabulary Test, 4th edition; the Expressive Vocabulary Test, 2nd edition, the Test of Problem Solving – Adolescent, 2nd edition; the Test of Adolescent and Adult Language – 4th edition, and the Clinical Evaluation of Language Fundamentals – Metalinguistics. (P #61). Her findings place the Student globally far below his same aged peers, even though there were certain subtests (e.g., metapragmatics) in which the Student scored in the average range. (P #61)

She confirms the diagnosis reached by Dr. T in her reports, and finds that the Student has Mixed Receptive/Expressive Language Disorder and Voice Disorder.¹⁹ She states that the Student's receptive and expressive vocabulary is almost two (2) standard deviations below the mean, and states that the Student "appears to know what he is talking about, when in reality his ability to process and understand language is severely impaired. (Id.) She recommends that the Student have speech/language therapy as part of his educational programming two (2) times/week to address his deficits. (Id.)

As part of her evaluation report, Dr. L1 reviewed the Student's medical records as well as his educational file. (Dr. L1 Testimony). Her review of his previous IEPs indicates that the Student was dropped from receiving speech/language therapy in elementary school, and that his intervening IEPs and school-based evaluations did not contain any re-evaluation for a speech/language evaluation or speech/language as a related service, despite evidence in those same IEPs that the Student had speech language needs. (Dr. L1 Testimony, P#63-67).

Further, Dr. L1 reviewed the 2017 speech/language re-evaluation report and protocols and testified that she felt that the entire battery of the CASL should have been given in order to obtain a complete and thorough picture of the Student's speech/language needs. (P #45, 70, Dr. L1 Testimony) Dr. L1 did not testify that the School District's 2017 speech/language evaluation was invalidated by only giving the core composite for the CASL; but, she did emphasize that more data in that report would yield better educational planning. (Id.)²⁰ Dr. L1

¹⁹ Dr. L1 notes that in her August 2016 report, she incorrectly reported that the Student has a mild intellectual disability. (Dr. L1 Testimony) She testified that this was a provisional diagnosis reached by Dr. T, but ruled out in Dr. T's final report. Dr. L1 forgot to make the correction in her final report; and, she testifies that she cannot state that the Student has a mild intellectual impairment. (Dr. L1 Testimony).

²⁰ Ms. G, the School District speech/language pathologist who evaluated the Student in 2017, testified that she administered the core subtests appropriate for his age and for a school setting; and, that the Student did not require the full battery on the CASL. (P#45, Ms. G Testimony)

recommends a multisensory academic program in reading, written expression and mathematics. (Id.)

3. Relevant IEPs.

The Student has five (5) IEPs for the statutory period: an IEP dated October 2013 (P#37), an IEP dated October 2014 (P#38), an IEP dated September 2015 (P#43), an IEP dated November 2016 (SD #23) and an IEP dated February 2, 2017 (P#53).

All of the IEPs note that the Student's eligibility designation is specific learning disability and other health impairment. (P #37, 38, 43, 53 and SD #23). All but the February 2017 IEP were based on the school-based triennial re-evaluations completed in 2013 and discussed above. (Id.)²¹ For the entire statutory period, and while the Student was in high school, he was placed in a self-contained special education class for all of his academics (P #37, 38, 43²², SD #23) and while he is attending his transition program, his placement is in a self-contained vocational program. (P #53)

In their individual components, all of the IEPs are strikingly consistent. From year to year, all of the IEPs clearly set forth similar information regarding the following:

²¹ The Student's teacher and case managers testified that the Student's IEPs were implemented as written. (Mr. P, Ms. S1, Ms. S3 Testimonies) The Student's case managers also testified that the Student's "Integrated Math" class in his senior year was, in fact, a jobs class; and, that the title for the class was as a result of the School District's computer scheduling program. (Ms. S3 Testimony). However, Mr. P, the Student's special education teacher testified that he implemented the goals on the Student's IEP in his class for senior year. (Mr. P).

²² The Student's September 2015 incorrectly states that his placement is in a general education classroom with special education supports. (P #43). However the Student, his case manager, and his special education teacher all testified that he was in fact in a special education room. (Student's Testimony, Testimony of Ms. S3 and Mr. P). The Hearing Officer notes that the IEP for 2015 in fact states an IEP placement in error, but finds that the error was harmless, as the Student's placement was not in fact changed.

- a. *Student Strengths*: From year to year during the Statutory Period, the Student is consistently described as “incredibly polite and nice with his teacher, peers and friends” (P. #37), an “excellent role model in class (P. #38), “very polite and well spoken” (P. #43, SD #23 ~ Student’s strengths copied verbatim from 2014 IEP to 2015 IEP), and “personal hygiene, personal safety and shopping” (P#53).
- b. *Academic, Developmental and Functional Needs and Present Levels of Academic Achievement and Functional Performance (“PLAAFP”)*: Each of the IEPs appropriately contains specific class and teacher comments for each year. (P #37, 38, 43, 53 and SD #23). Yet for all of the IEPs from 2013 to 2016 ~ while the Student was enrolled in High School (P #37, 38, 43 and SD #23) the description of his Academic needs are copied verbatim from IEP to IEP and summarized as follows: academics are difficult for the Student, his standardized testing places him in the lower 12% when compared to peers (for science) in the lower 11% for math, in the lower 2% for reading and written expression. All of the High School IEPs note that the Student cannot interpret scientific data; cannot follow the steps in a scientific investigation; cannot find the appropriate meaning of words, main ideas and authors approach; cannot identify relationships, supporting details, generalizations or conclusions in any given text; cannot identify and manipulate measurement data; cannot solve expressions equations inequalities; cannot apply numbers concepts and properties; cannot solve math problems applying probability concepts, basic operations or geographic representations; cannot develop a topic, apply sentence structure or use punctuation correctly. (Id). In his 2017 IEP the

Student's academic needs are specifically stated toward transition planning and restate his answers to an independent learning survey (P #53). All of the IEPs contain statements of the Student's classroom grades (in the A and B range), which at first seems at odds with his described level of functioning. However, elsewhere in all of the IEPs is a statement that the Student is on a modified grading system. (P #37, 38, 43, 53 SD #23)

c. *Assistive Technology*: None of the IEPs during the Statutory Period indicate that the Student needs assistive technology;

d. *Accommodations and Modifications (Generally)*: for 2013, 2014 and 2017 the accommodations and modifications are remarkable similar with an emphasis on extensions of time, student monitoring, preferential seating offering choices for responses, using a calculator, peer buddy, embedding choices for responding, explain directions with concrete examples and embedding choices when eliciting information. (P #37, 38, 53) For 2015 and 2016, in addition to those already listed, there is a strong emphasis on giving verbal instructions in clearly stated steps, and the accommodations and modifications are stated verbatim for these years. (#43, SD #23).

e. *Standardizes Scores*: All of the Student's High School IEPs in the Statutory Period contain PLAN and EXPLORE standardized test data. (P #37, 38, 43, 53 and SD #23). At hearing one of the School District's psychologists explained to the Hearing Officer in detail the meaning of the scores ~ and that all of these scores from year to year placed the Student well below his same aged peers for all academics. (Dr. L2). No clear explanations of this test data appears in the text of any of the IEPs. (P. #37, 38, 43, SD #23).

f. *Goals and Objectives:* For the IEPs from 2013-2016, the Student has academic goals in the areas of Language Arts/English/Reading, Mathematics, Science, Social Sciences, Vocational, and Post-Secondary Education. (Id). For the 2017 IEP, the Student has no academic goals whatsoever, and only has vocational goals. (P #53).

Almost without exception, despite statements of academic achievement and functional performance that restate extremely low standardized test results, low classroom performance (when compared to his same-aged peers), difficulty with basic skills in reading, mathematics, written expression, and poor knowledge of science concepts or social studies ~ the Student's goals are not specific or detailed as to whether he will complete them independently or with adult assistance, whether he will complete them using accommodations and modifications (and if so, which ones), whether he will demonstrate core knowledge at his instructional level (which is not defined by grade level) or at the level of his same-aged peers. (P #37, 38, 43, 53, SD #23).

For example, in the Student's 2016 IEP (SD #23), in the area of English/Language Arts, the Student's present levels of academic achievement and functional performance contains the Student's EXPLORE scores that are reported at a ■ (with no explanation that this score places the Student well below his same-aged peers). The goal is stated as follows: *"In order for him to achieve his post-secondary goal of being a heating and cooling technician, [the Student] will need to take an exam to receive a heating and cooling technician certificate from a trade school. This means that [the Student] will need to be able to read, write, and comprehend complex tests."* The goal does not define what constitutes a complex test either by grade level or any other objective measure; does not state

how long a passage of complex text will be, or give any other specific information or measureable description of the type of reading the Student will be expected to complete. As an example of this non-specific goal's quarterly benchmarks, the IEP states that the Student *"can logically develop an argument based on precise knowledgeable claims with 70% accuracy"*. Again, there is no specificity as to the nature of the argument, what the term "precise knowledgeable claims" means, whether the Student can use accommodations to perform this goal (and which ones), or whether the Student can use adult assistance in performing the goal. The evaluation procedure is stated only as "oral/written benchmarks" with no further detail. (SD #23).

After reviewing all of the goals in all of the IEPs for the Statutory Period, the Hearing Officer could only find one example of a specifically stated benchmark. However, the benchmark was couched in a goal statement that makes little sense. In the 2014 IEP (P #38), the Student's statement of general academic needs notes: *"[the Student] could not identify or manipulate measureable data, and had difficulty in solving expressions equations inequalities. [He] also struggled applying numbers concepts and properties...[and] could not solve math problems applying probability concepts, basic operations, or graphical representations."*

Further in this IEP the present level statement of academic achievement for mathematics states as follows: *"[the Student's] Learning Environment Screening from 2013/2014 school year [sic] stated [the Student] can identify and manipulate the properties of plane figures 2 out of 3 times."* This statement does not explain what properties of plane figures the Student can identify or manipulate, whether he is using accommodations, or adult assistance, etc. The

RECEIVED 11/9/2017 - SPECIAL EDUCATION SERVICES

goal statement for mathematics is as follows: “[the Student] will need to be able to use basic geometry and algebra...and balance a checking account.” There is no specifics as to the types of geometry or algebra to which this goal relates. The quarterly benchmark for the goal is stated as follows: “When given problems involving adding, subtracting or multiplying polynomials (e.g., $(2x^2-4x+5) + (x^2 + 2x-7)$, $(2x +1)(3x-4)$, Student will use correct operations such as combining like terms, distributive property to solve 7 out of 10 problems correctly.” When reading these as a whole it appears as though this very specific benchmark does not reflect the Student’s ability as stated earlier in the IEP. (P #38) The Hearing Officer notes that the goals for science, social studies, and written language are equally non-specific for all of the Student’s High School IEPs. (P# 37, 38, 43 and SD #23). The 2017 IEP does not contain any statements of any academic goals whatsoever. (P #53).

All of the Student’s IEPs for the Statutory Period indicate that he is a social young man, and that once he is comfortable with people, he can demonstrate basic self-advocacy skills. (P #37, 38, 43, 53 SD #23). The Student’s special education teacher for his freshman and senior years indicated that he is able to ask for help when needed, and that he has good advocacy skills. (Mr. P Testimony)

g. Special Education and Related Services. All of the Student’s High School IEPs for the Statutory Period state that the Student will be in a self-contained classroom for all of his academic periods. (P #37, 38, 43, SD #23). School District witnesses testified that the Student did not receive a multi-sensory teaching program such as the Wilson Program for reading (which was available in the School District). (E.g., Mr. P Testimony) In fact the Student’s special education teacher for both his freshman and

senior years testified that he did not have any specific programs or methodologies in his classroom, and described his teaching not as researched-based “direct instruction” but rather as a “direct instruction approach”. (Id.) This teacher described that he was the only teacher for the whole special education classroom, that most of the other students were working a level lower than the Student, and that he walked to the Student’s desk to check on his work about once a class period. (Id) He allowed the Student to retake tests if he got a low score. He testified that the Student was successful in his class because he completed extremely modified assignments, asked for help and became more social over his high school career. (Id).

None of the Student’s High School IEPs for the Statutory Period contain any related services or related services goals whatsoever. (P #37, 38, 43, SD 23). His 2017 contains 30 mpw of social work services. (P #53). The School District did submit service logs that indicated Student and family interaction with related services providers, despite the fact that there were no specific minutes for related services in the IEPs. (P #74)

h. Transition Plans. All of the Student’s IEPs for the Statutory Period contain transition plans. (P #37, 38, 43, 53, SD #23). All of the Transition plans have a vocational program in mind for after high school²³, and all of the relevant portions of the transition plans are filed out. None of the

²³ The Student is desirous of obtaining travel training to use public transportation. (Student Testimony). The Student’s IEPs do not provide transportation as a related service because the Student can take public transportation from home to school. (P #37, 38, 43, 53, SD #23). His IEPs do not contain travel training, because he can get himself to and from school on public transportation, even if his ability to go elsewhere using public transportation is limited. (Id. Ms. S2 and Student Testimony). However, if the Student’s transition programming included a goal for travel training, it could be added to his IEP. (Ms. S2 Testimony)

Student's transition plans indicate that he will be taking any further academic classes in addition to his vocational classes (Id.)²⁴ All of the IEPs state that the Student is due to graduate,²⁵ and none of the Transition Plans indicate that the Student is in need of special education and related services until his twenty-second birthday. (Id.)²⁶ Despite the Student's desire to become travel trained to use public transportation (Student Testimony), none of his IEP Transition plans contain a goal for travel training. (Id.)

The transition plans also state the Student likely would need social work services after leaving High School, but do not specify the duration or amount of social work services needed. (Id.)²⁷

- i. *IEP Revisions.* For all of the IEPs during the Statutory Period, the Parent and the Student were sent proper notices and received summary of

²⁴ In his testimony, the Student is adamant that he wants a vocational program. (Student Testimony) The Student is aware of his reading and academic deficits and admitted that High School was difficult for him. (Id). He testified that he would like to improve his reading skills; but, that he does not want to miss any of his classes at his current placement (██████) or take academic classes/tutoring after school or on weekends (Id), as he needs to be available to help his family. (Id) The Student testified that he would consider working on his academics during the summer. (Id)

²⁵ It was the impending graduation from High School that prompted this due process hearing. (DPCN, Second Amended DPCN). The Student, his family, and an educational advocate had meetings with the School District during his senior year and realized that the Student's plans to go to college were not realistic given his current abilities. (Student, Ms. D. and Ms. P Testimonies). The Student's recommended date for graduation is currently noted to be for June 2018 in the 2017 IEP. (P #53).

²⁶ The School District put on evidence through a School District witness (Ms. M) of the appropriateness of ██████ ██████ as a possible transition program in the event that this Hearing Officer rules that the Student needs a multi-sensory aspect to his transition program. During the pendency of this hearing, the Student agreed to allow his school packet to be sent to ██████ and counsel stipulated that he had been accepted there. The Student was allowed to come back and testify that even though he has visited ██████ he does not want to go there, because he believes it is too far from his home. (Student Testimony)

²⁷ The Student did not have social work as a related service during any of the High School IEPs (despite a transition plan calling for social work related services after High School). (P #37, 38, 43, SD #23). In his 2017 IEP the Student has social work services for 30 mpw. (P#53).

conference forms in addition to the IEPs. (P #34, 37,38, 42, 43, 45, 46, 51, 52, 53, 56, 71, 74, SD #16, 23, 24²⁸, 25 - 35, 37) .Other than the clerical error discussed in footnote number 19 above, there is no evidence to indicate that any changes to the Student's programs were made outside of the IEP process.

4. Student's and Parent's Requests for Records.

The Student, through his attorney, made an appropriate request for his educational records on February 25, 2016. (P #75). The School District did not put on any witnesses or enter any documents into evidence at hearing to demonstrate that it made a timely production of student records, despite the high volume of Student records entered into evidence. Moreover, during the hearing, several witnesses referenced documents and emails that the Student's attorney indicated had not been disclosed. (See, Ms. S1, Ms. P, Ms. S3, Mr. P Testimonies) Two exhibits entered into evidence (P #34, 80) contain items that were produced to the Parent for the first time at hearing. Parent's #34 was a group exhibit of blank IEP Report Cards. The attorneys for the School District produced a witness from the School District's information department, to explain that a computer programming malfunction identified for the first time in hearing prevented the completed documents from being printed. (Ms. S5) The School District's attorneys then gave the Hearing Officer and the Student's attorney accurate copies of the exhibits on the last day of hearing. Similarly, the Student and his special education teacher testified about a news video he made during his senior year of High School. (Student Testimony, Mr. P Testimony). The School

²⁸ The parties have stipulated that all unsigned exhibits in evidence are computer-generated copies of documents that were in fact signed.

District's attorneys were able to provide a copy to opposing counsel and to the Hearing Officer on the last day of hearing. (P #80).

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:

The purpose of the *IDEA* is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs."²⁹ The Congressional purpose of providing access to a FAPE stems from the requirement that the education provided through the IEP confer some benefit to the child.³⁰

In deciding whether the School District provided a FAPE to the Student, the inquiry is limited to (a) whether the School District complied with the procedures set forth in the *IDEA*; and, (b) whether the Student's IEP is reasonably calculated to enable the Student to receive an educational benefit.³¹ Under the latter substantive prong, the School District need not maximize the potential of the Student; the School District has met its burden under the *IDEA* if

²⁹ *Bd. of Education v Rowley*, 458 U.S. 176-179-71 (1982); *Hinson v Merritt Educ. Ctr.*, 579 F.Supp.2d 89, 98 (2008), citing 20 U.S.C. §1400(d)(1)(A).

³⁰ *Rowley*, 458 U.S. at 200; *Hinson*, 579 F.Supp.2d at 98.

³¹ *Rowley*, 458 U.S. at 206-07.

it provides a meaningful educational (i.e. non-trivial) opportunity,³² and is appropriately ambitious in light of the Student's circumstances.³³

Regarding the allegations of a procedural violation of the *IDEA*, this Hearing Officer may find a violation of FAPE only if the alleged procedural inadequacies (a) impeded the Student's right to a FAPE, (b) significantly impeded the Parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or (c) caused the Student a deprivation of an educational benefit.³⁴ In short, this Hearing Officer would have to conclude that the procedural violations affected the Student's substantive rights under the *IDEA*.³⁵

Discussion

Issue #1: Whether, from the time period of June 3, 2014 to the present the School District properly evaluated the Student in all suspected areas of disability; and, whether the Parent is entitled to an Independent Educational Evaluation at public expense?

The Student submits that for the Statutory, the School District failed to evaluate the Student appropriately in all areas of suspected disability; that the evaluations the School District had performed during the Statutory Period were inappropriate and therefore denied the Student a free appropriate public education ("FAPE"); and, that the School District should have agreed to the Parent's request for an IEE. The Parents/Student request a ruling in their favor;

³² *P. v Newington Bd. of Educ.* 546 F.3d 111 (2nd Cir. 2008).

³³ *Andrew F. v Douglas County School District*, 137 S. Ct. 988 (2017).

³⁴ 34 C.F.R. §300.513(a)(2).

³⁵ *Lesene v District of Columbia*, 447 F.3d 828, 834.

and, further request that the Hearing Officer reimburse the Student's out-of-pocket private evaluation costs or pay the private providers directly.

The School District submits that during the Statutory Period the Student was evaluated in all suspected areas of disability; and, therefore was not denied a FAPE. The School District further submits that the school-based evaluations for the Student were administered appropriately. The School District requests a ruling in its favor and that Hearing Officer deny all requested relief by the Parent.

a. Evaluations Generally

Under the *IDEA*, the School District had an affirmative obligation to perform a full and individual evaluation of the Student in all suspected areas of disability before the provision of special education and related services.³⁶ A School District also has an obligation to re-evaluate the Student if it determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation.³⁷ An evaluation is defined as the procedures used to determine whether a child has a disability, and the nature and extent of special education and related services the child needs.³⁸ A parent or a student may obtain an independent educational evaluation of the Student at public expense if they disagree with a public evaluation that has already been given to a child and a school district cannot show that it was appropriate.³⁹

³⁶ 20 U.S.C. §1414(a)(1)(A).

³⁷ 34 C.F.R. §300.303.

³⁸ 34 C.F.R. §300.15.

³⁹ *Jack B v. Council Rock Sch. Dist.*, (2008 WL 4489793)

Specifically the standards for an appropriate evaluation⁴⁰ require a school district to use a variety of assessment tools, to gather relevant functional, developmental and academic information about the child (including information from the parent), use technically sound instruments to determine factors such as cognitive, behavioral, physical and developmental factors which contribute to a disability determination; and to refrain from using any single measurement or assessment as the sole criterion for a determination of disability or an appropriate program.⁴¹ The measures used for evaluation must be valid, reliable, and administered by trained professionals in accordance with the instructions provided for the assessments; must assess the child in all suspected areas of disability; must be sufficiently comprehensive to identify all of the child's special education and related services needs, and provide relevant information that directly assists in determining the child's educational needs.⁴²

b. School District's Affirmative Duty to Re-evaluate During the Statutory Period.

Because the School District is under an affirmative duty to re-evaluate the Student once it becomes apparent that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation, it is necessary to look at the relevant IEPs for the Student and determine if there was sufficient evidence that the Student needed a re-evaluation sooner than every three years.

⁴⁰ Found at 34 C.F.R. §§300.304-306

⁴¹ 34 C.F.R. §300.304(b)(1-3); *In re Great Valley Sch. Dist.* 114 LRP 49527 (SEA Pa. 2014)

⁴² 34 C.F.R. §§300.304(c)(1)(ii iv), (2), (4), (6) and (7).

The 2013 triennial evaluation itself falls outside the Statutory Period. While this Hearing Officer is not making a FAPE ruling on the appropriateness of the evaluation, she must note that for a child with ongoing observations of pronounced decoding needs, inattentiveness, slow processing and overall lack of academic progress, it is remarkable that the School District did not request a speech/language, occupational therapy, social work, assistive technology or auditory processing re-evaluations in 2013. Nonetheless, the information that was available in 2013 for the Student's triennial evaluation continued to remain true in the intervening years between 2013 and early 2017.

From year to year, every one of the Student's IEPs unambiguously records teacher comments, testing results, Student input, classroom reports and other information to have put the School District on notice that the Student was at risk for having more needs than just a specific learning disability and ADHD. (P 337, 38, 43 SD #23). Every High School IEP is replete with the Student's uncontroverted history of [REDACTED], of slow acquisition of language, of reading difficulties, especially in the area of decoding, with difficult listening and following directions (Id), yet there was no effort made to assess whether the Student was at risk for a CAPD in addition to his ADHD (and if so to make an attempt to address it specifically). Year after year, the Student's very low academic scores for standardized testing were reported (Id), yet there was no effort to have the Student's IQ reassessed to rule out an intellectual impairment. For a Student who obviously struggles with language (Id), the fact that his IEP did not consider that an updated Speech/Language assessment would be helpful is concerning. This Hearing Officer concludes that the School District was on ample notice from 2014 to the present that its 2013 re-evaluations needed to be

RECEIVED 11/9/2017 - SPECIAL EDUCATION SERVICES

updated immediately and broadened in scope in order to address the Student's pressing academic needs.

Moreover, it does not escape this Hearing Officer's notice that these very re-evaluations were completed as part of the 2017 triennial re-evaluation. The School District ~ in a dramatic about-face from its 2013 re-evaluations ~ correctly chose to re-evaluate the Student in vision, hearing (and CAPD), occupational therapy, general intelligence, academic achievement, social work and assistive technology. (SD #37) There was no evidence that the Student's profile changed dramatically since 2013: if anything the evidence shows that this Student has presented with the same educational profile for the entirety of his elementary, middle school and high school years in the School District. (P#4, 5A, 12-21, 24-26, 30-33, 35-39, 43-46, 53-54, 56, 59, 62-67).

"School authorities cannot properly address problems which they do not understand" *Bd. of Educ. of Oak Park and River Forrest High School Dist. No. 200 v Illinois State Board 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." *Id.* This Hearing Officer concludes that the School District was under an affirmative duty to re-evaluate the Student in between triennial evaluations, and that the School District had notice that a re-evaluation in the areas of speech/language, occupational therapy, hearing (CAPD), general intelligence, social work and assistive technology was necessary for the Student during the Statutory Period, and that the School District did not undertake these necessary re-evaluations until the 2017 triennial evaluation. In addition this Hearing Officer finds that as the Student was already undergoing private evaluations at the time of the late 2016 domains meeting (SD #37), (and the

RECEIVED 11/9/2017 - SPECIAL EDUCATION SERVICES

ultimate intermingling of private evaluator information contained within the School District's 2017 triennial evaluation reports), the School District's choice of areas and re-evaluations is linked with the Student's private evaluations.

*Therefore, this Hearing Officer finds that for the Statutory Period the School District failed to properly re-evaluate the Student, and that the Student should be reimbursed for his private evaluations in the area of speech/language, audiology and psychology.*⁴³

c. Independent Educational Assessments.

In 2017 the School District conducted evaluations in the areas of Vision, Hearing, Occupational Therapy, Speech/Language, Psychological, Social Work and Assistive Technology. Immediately after the IEP Meeting in February 2017 to consider these evaluation reports, the Student asked for an IEE (prompting the School District to file a counter-DPCN to defend its evaluations).

As stated above, the School District psychologist administered several tests: the Wechsler Individual Achievement Test (WIAT-III), the Wechsler Abbreviated Scale of Intelligence (WASI-II)⁴⁴, the Vineland Adaptive Behavior Scales II, the Behavior Inventory of Executive Functioning Skills (BRIEF) and found the

⁴³ The Hearing Officer finds that Dr. B, while a qualified expert witness, did not give any standardized assessments, nor did she observe the Student in an educational environment. (Dr. B Testimony) Therefore her educational evaluation is not included as a reimbursable evaluation report.

⁴⁴ The Student's private psychological evaluator, Dr. T, took issue with the fact that only the abbreviated WASI-II was given for the Student. (Dr. T Testimony). However, Ms. W, the School District psychologist testified that she was aware of the Student's concurrent psychological evaluation by Dr. T and did not want to duplicate the testing (although she did read Dr. T's evaluation report prior to finalizing her own.) (Ms. W Testimony). Dr. T also commented that from reading the protocols it appeared that the School District psychologist failed to give the word reading subtest in the right order in order to determine the Student's reading skills. (Dr. T Testimony). At her testimony, Ms. W was able to demonstrate that she gave the correct reading subtests in the right order. (Ms. W Testimony, P#55). Dr. T did not find any scoring errors on the School District's 2016 psychological evaluation. (Dr. T Testimony).

Student's functional IQ scores, achievement testing, skills to be consistently within the Extremely Low to Borderline range. Her testing also found that overall the Student's scores on the BRIEF were in the Average range. (P #46, Ms. W Testimony). She conducted an interview of the Student, observed him in his learning environment, and reviewed relevant Student records (including a draft of the Student's private psychological evaluation). There was no evidence that she scored her tests incorrectly. She testified that she followed the test protocols correctly, and this Hearing Officer finds her testimony credible. The Hearing Officer concludes that although the private psychological evaluation obtained from Dr. T is more comprehensive, the psychological test performed by Ms. W was appropriate. *Accordingly, the Parent is not entitled to an IEE at public expense for the school-based psychological evaluation.*

The School District performed a Vision Assessment in 2017 on the Student and his vision was 20/20; however, the evaluator noted that he was privately diagnosed with a vision disorder that could be improved with private vision therapy. The vision therapist also reviewed a private medical ocular report and noted that the Student's eye doctor was recommending vision therapy. (SD #37, Ms. C Testimony). There is no evidence that the eye exam she gave the Student was not performed appropriately or whether she failed to consider additional information. Her conclusion that vision exercises prescribed by an eye doctor are not related services under an IEP does not invalidate her evaluation. *The Hearing Officer concludes that the Vision Assessment was appropriate and that the Student is not entitled to an IEE at public expense.*

The Student received a school-based hearing/CAPD evaluation in 2017. The Student's hearing acuity was found to be normal. He was given audiological

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testing as well as testing central auditory processing evaluation. He was diagnosed with a CAPD, with noted deficits in auditory figure ground, closure, binaural integration and binaural separation. The Student was found to have a decoding deficit (poor discrimination of fine acoustic differences in speech) which present as a person who can't hear, didn't hear or misheard spoken instructions. (P#51) The School District audiologist testified that the tests she used were given according to their instructions, commonly used in her area of expertise and that she found the results reliable. (Dr. D Testimony)⁴⁵. Again, the private audiological report is far more comprehensive and provided additional data on the Student. Nevertheless, the Hearing Officer concludes that the School District's Hearing/CAPD evaluation was appropriate. *The Student is not entitled to an IEE at public expense for this evaluation.*

The Student was evaluated in the area of occupational therapy by the School District in 2017. The Student was given two Visual Motor Integration ("VMI") subtests by the School Occupational Therapist and obtained scores below his same-aged peers. She noted that the Student's handwriting is legible. (P#56) There was a concern raised that the standardized assessment used (the Beery VMI) was invalid as the occupational therapy evaluator only gave two of the subtests and not the main form of the Beery VMI. (Dr. T Testimony). However, the occupational therapy report itself (confirmed by the testimony of the evaluator) explained that she was relying on the Beery VMI main form given by Dr. T a few months before. (P #56, Ms. R Testimony). Even after reviewing a

⁴⁵ School District evaluators have discretion in selecting the diagnostic tests they use. *E.M. v Pajaro Valley Unified School District*, 57 IDELR 1 (9th Cir. 2011); *In re Broward Cty. Sch. Bd.*, 115 LRP 4479 (SEA Fla. 2014). The fact that the Student's private evaluators chose different assessments, or gave additional subtests is not in and of itself proof that the School District's evaluations were inappropriate.

portion of the manual entered into evidence (P #78) this Hearing Officer finds that relying on Dr. T's portion of the test does **not** necessitate invalidation the results of the School District's evaluation. Again, this Hearing Officer finds that Dr. T's evaluation was very comprehensive and has no reason to doubt the accuracy of the Beery VMI main form administered by her. Even if it was preferable to give the main form again, this Hearing Officer concludes that that mistake does not make the school-based occupational therapy evaluation inappropriate. *Therefore, the Student is not entitled to an IEE at public expense for an occupational therapy evaluation.*

The Student was re-evaluated in speech in 2017. As stated previously he was given the Comprehensive Assessment of Spoken Language ("CASL") (P #45). This evaluation report was comprehensive enough to confirm the presence of Mutational Falsetto, and below average scores in expressive language, comprehension, metalinguistics, pragmatic language, making inferences, determining solutions, problem solving, interpreting perspectives, and transferring insights. Some of the subtests indicated performance in the low average to average range, but overall the test results confirm a Language Disorder. (Id.) There was no concern that the test was scored incorrectly; and the evaluator used multiple sources of information in completing the report including classroom observations, student interviews and record reviews. (Id.) The Hearing Officer concludes the Student's private Speech/Language evaluation was more comprehensive and gathered additional data. Nevertheless, *the School District's Speech/Language re-evaluation of the Student was appropriate and that the Parent is not entitled to an IEE at public expense for this evaluation.*

RECEIVED 11/9/2017 - SPECIAL EDUCATION SERVICES

The Student was re-evaluated in the area of social work in 2017. As discussed above, the School District social worker completed a record review and interviews of the Student, his teachers and Parent and concluded that the Student's socialization occurs primarily outside of his current placement at home with family and family friends and in the community. (SD #30). Although the School District social work did not give any formalized assessments, he testified that the School Psychologist was administering those specific assessments relating to his area of expertise. (Mr. I Testimony). There was no evidence to indicate that the School District social worker did not review enough data or otherwise complete his evaluation correctly. *This Hearing Officer concludes that this evaluation was appropriate, and that the Parent is not entitled to an IEE at public expense for a social work evaluation.*

The Student's Assistive Technology ("AT") evaluation included a review of the Student's records, his communication methods and his motor abilities. It also included observational data and (limited) contact with the Student's teacher. Although no formalized assessment was used, the evaluator observed the Student while he performed a multitude of tasks such as writing, copying text, writing dictated text, typing, etc. The report makes recommendations for specific software that would be appropriate (Ginger Software, graphic organizer software, Google Docs) and gives specific recommendations for how to follow up with implementing the AT evaluation report. (P#42). *The Hearing Officer concludes that the AT Evaluation was appropriate, and finds that the Student is not entitled to an IEE at public expense for this evaluation.*

Finding: For the Student in part and For the School District in Part.

RECEIVED 11/9/2017 - SPECIAL EDUCATION SERVICES

Issue #2: Whether, during the Statutory Period, the School District properly observed its procedural requirements under the Individuals with Disabilities Education Act (“IDEA”); and, if not, whether an such procedural violation denied the Student a FAPE, significantly impeded the Parent’s participation in the decision-making process regarding the provision of FAPE to the Student, or denied the Student an educational benefit?

The Parent submits that the School District violated the procedural requirements of the *IDEA*. Specifically the Parent alleges that the School District has failed to produce Student records pursuant to the *IDEA*; that the School District made changes to the Student’s IEP outside of the IEP process; and, that the School District failed to give the Student/Parent’s their procedural rights

The School District submits that for all of the procedural violations listed above, either it denies that the events took place; or it contends that if the procedural violation did occur the Student was not denied a FAPE, the Parent was not denied a significant opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or the Student was not denied an educational benefit. The School District asks for a ruling in its favor and that the Hearing Officer deny all of the Student’s/Parents’ requested relief.⁴⁶

a. Generally

Regarding the allegations of a procedural violation of the *IDEA*, this Hearing Officer may find a violation of FAPE only if the alleged procedural inadequacies

⁴⁶ As relief for these alleged violations, the Parents ask for the following: (a) That the School District provide an appropriate transition program for the Student; (b) That the School District should provide at least two (2) hours a day of intensive reading and written language instruction; (c) That the School District provide math instruction; (d) That the School District provide compensatory education in the form of remedial reading/written language instruction through Lindamood Bell; (e) That the School District provide academic tutoring in all academic subjects; (f) That the School District should reimburse the Student/Parents for their assistive technology expenditures; and provide additional assistive technology for the Student; (g) That the School District provide compensatory speech, language and voice therapy to the Student; (h) That the School District provide compensatory and on-going psychotherapy and counseling services; (i) That the School District provide compensatory and on-going occupational therapy; and, (j) That the School District provide oral language curricula.

(a) impeded the Student's right to a FAPE, (b) significantly impeded the Parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or (c) caused the Student a deprivation of an educational benefit.⁴⁷ In short, this Hearing Officer would have to conclude that the procedural violations affected the Student's substantive rights under the *IDEA*.⁴⁸

b. Alleged Changes to the Student's IEP Program without an IEP.

At hearing, the Student produced an IEP with a "change" of the Student's placement from a fully self-contained special education program to one where the Student was in a general education setting with special education supports in the general education setting. (P#43). As noted above, the Student's placement was not actually changed, and the School District presented a witness to explain that it was a clerical/computer error. *The Hearing Officer finds that this is not a procedural violation of the IDEA that denies the Student a FAPE, significantly impedes the Parent's or the Student's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or caused an deprivation of an educational benefit.*

c. Production of Student's Records.

Under the *IDEA*, the School District is required to permit parents and students the right to inspect and review any educational records relating the student that are collected, maintained, or used by the school district.⁴⁹ School districts are to comply with requests for records "without unnecessary delay" and "before any

⁴⁷ 34 C.F.R. §300.513(a)(2).

⁴⁸ *Lesene v District of Columbia*, 447 F.3d 828, 834.

⁴⁹ 34 C.F.R. §300.613(a).

meeting regarding an IEP, or any hearing”.⁵⁰ This right extends to any representative of the parent or the student.⁵¹

The Parent, through her attorney, made a proper request for the Student’s records in February 2016. (P#75). At hearing, several witnesses testified about records that the Student’s attorney said had not been produced; and, two exhibits entered into evidence (with the parties agreement to waive the five (5) day disclosure rule) ~ which would have fallen under the February 2016 request ~ were identified at hearing and produced to the Student’s attorney, and entered into evidence, on the last day of hearing. (P #34, #80). In each instance the records (P#34 was a corrected copy of IEP report cards that were printed blank and not noticed nor corrected by School District counsel until hearing had begun; and P#80 was a copy of the Student’s news video, a project for his senior year of High School that directly related to issues regarding his voice disorder), were relevant to the hearing. The Student was entitled to them at least 45 days prior to hearing, not on the last day. *This Hearing Officer concludes that the School District’s failure to produce these records constitutes a substantive violation of the IDEA.*

d. Failure to convene an IEP meeting to consider private evaluation reports as well as School District AT evaluation report.

At hearing, the witnesses and counsel all agreed that there has been no IEP since 2017 to consider the Student’s final private evaluation reports, or to consider the

⁵⁰ Id.

⁵¹ 34 C.F.R. §300.613(b)(3).

School District's AT evaluation report, despite a legal obligation to do so.⁵² No witnesses have offered any explanation of why such meeting could not have taken place; and, in fact the Student's current case manager stated (when directly asked by the Hearing Officer) that she had no explanation for why such a meeting hasn't taken place. *The Hearing Officer finds that the failure to have an IEP meeting after the completion of the private evaluations and after the AT evaluation to consider those reports denied the Student a FAPE.*

Finding: For the School District in Part and For the Student in Part.

Issue #3: *Whether, during the Statutory Period, the School District appropriately created the IEPs designed to provide the Student a FAPE?*

The Individualized Education Program ("IEP) is a written document created in a collaborative meeting between the parents of a student with a disability and school-based members of the educational team.⁵³ IEPs outline an eligible student's special education, related services and accommodations and must include essential components.⁵⁴ Central to the IEP is that it must provide for a FAPE in the least restrictive environment.⁵⁵ FAPE is defined as special education and related services that: (1) are provided at public expense; (2) meet the standards of the State; (3) include preschool, elementary school or secondary school; and (4) are provided in conformity with the IEP.⁵⁶

⁵² 34 C.F.R. §300.502(c)(1).

⁵³ 20 U.S.C. §1414(d)(1)(A)(i). 34 C.F.R. §300.320(a).

⁵⁴ Id.

⁵⁵ *Endrew F. v Douglas County Sch. Dist.*, 137 S. Ct. 988, 69 IDELR 174 (2017). *See also, Bd. of Educ. of Hendrick Hudson Central Sch. Dist. V Rowley*, 458 U.S. 176, 553 IDELR 656 (1982).

⁵⁶ 34 C.F.R. §300.17.

While there is no firm definition of “appropriateness” in the *IDEA*, the United States Supreme Court (“Supreme Court”) has ruled that an IEP is appropriate when it provides personalized instruction with sufficient support services to permit a student with a disability to benefit educationally from the instruction.⁵⁷ In order to be appropriate, every IEP must (1) be formulated in accordance with the procedural requirements of the *IDEA*, and (2) must be “reasonably calculated” to enable the child to obtain an educational benefit.⁵⁸ Most recently the Supreme Court has rejected that an IEP is appropriate if allows mere “*de minimus* progress.”⁵⁹ Especially for children in self-contained special education programs, the IEP must be “appropriately ambitious” and provide “challenging objectives” in light of the student’s unique circumstances.⁶⁰ School Districts must be able to offer “cogent and responsive” explanations for their decisions that show an IEP is reasonably calculated to enable a student to make progress appropriate in light of his or her circumstances.⁶¹

The Student alleges that the IEPs for the Statutory Period do not provide FAPE in many ways. This Hearing Officer will address them separately.

a. Do the relevant IEPs provide accurate present levels of academic achievement and functional performance?

⁵⁷ *Rowley*, 458 U.S. 176 (1982).

⁵⁸ *Id.*

⁵⁹ *Endrew*, 137 S.Ct. 988 (2017).

⁶⁰ *Id.*

⁶¹ *Id.* *Endrew* does not create a new standard in *IDEA*, but rather clarifies the existing *Rowley* standard. As such, it does not change the interpretation of the *IDEA*, but aides in this Hearing Officers analysis of whether the Student’s IEP was designed to provide FAPE. This Hearing Officer concludes that even though *Endrew* came down after the IEPs at issue were drafted, and after the DPCN is filed, there will be no error in referencing in this case.

The present levels of academic achievement and functional performance (“PLAAFP”) are the building blocks for developing measurable annual goals.⁶² The PLAAFP must include information on “how a child’s disability affects the child’s involvement and progress in the general education curriculum....”⁶³ As with all of the IEP, the PLAAFPs must be written in a manner that allows the parents and those working with the child to understand with clarity the level at which the child is functioning at the time the IEP is drafted. The PLAAFPs must be reflect the range of the child’s strengths and deficits in both academic and non-academic domains.⁶⁴ The PLAAFP statement should be specific, but understandable to the participants in the IEP process as well as those persons who will implement the IEP. Using test scores in a PLAAFP is permissible, but test-scores that are not self-explanatory or accompanied by an explanation may be meaningless or impeded a parent’s ability to meaningfully participate in the IEP process.⁶⁵ The absence of a PLAAFP statement (or a PLAAFP statement that lacks specificity, fails to establish a baseline from which measureable and relevant annual goals may be written or compromises the parent’s ability to meaningfully participate in the IEP process) can constitute a denial of FAPE.⁶⁶ The Parent makes the global argument that all of the PLAAFPs in all five (5) of the relevant IEPs are inappropriate. At hearing, the Parent focused mostly upon

⁶² 34 C.F.R. §300.320(a)(1); *Bend-Lapine Sch. Dist. v K.H.*, 43 IDELR 191 (D. Or. 2005), *aff’d*, *Bend-Lapine Sch. Dist. v. K.H.*, 234 F.App’x 508 (9th Cir. 2007).

⁶³ 34 C.F.R. §300.320(a)(1).

⁶⁴ *Letter to New*, 211 IDELR 464 (OSEP 1987).

⁶⁵ *See, O’Toole v Olath Dist. Schs. Unified Sch. Dist. No. 233*, 144 F.3d. 692 (10th Cir. 1998); *Chase v Mesa County Valley Sch. Dist. No. 51*, 53 IDELR 72 (D. Colo. 2009).

⁶⁶ *Friedman v Montgomery County Bd. of Educ.*, 24 IDELR 654 (D.Md. 1996)/

those PLAAFPs which contained PLAN and EXPLORE scores, and correctly highlighted that those scores were not accompanied by any explanatory information. (P #37, 38 ,43 ,53 and SD #23). As stated above, no clear explanations of this test data appears in the text of any of the IEPs, (P. #37, 38, 43, SD #23), and without Dr. L's explanation to this Hearing Officer about what the PLAN and EXPLORE test scores meant, this Hearing Officer would have been unclear on the significance of these scores.

Other than the statement of the PLAN and EXPLORE test scores, this Hearing Officer finds that overall the PLAAFPs meet a minimum level of specificity regarding the Student's strengths, deficits, learning styles (both academically and non-academically). The PLAAFPs for all five (5) of the relevant IEPs, (except for the PLAN and EXPLORE scores) are reasonably understandable and do not mislead an average reader as to the Student's current academic achievement and functional performance. Even the recitation of Student's A and B grades is acceptable because the IEPs do clarify he is on a modified curriculum.

However, this Hearing Officer finds that the recitation of the Student's PLAN and EXPLORE scores is problematic. The Hearing Officer finds that these scores are an accurate statement of the Student's abilities. In fact, once one realizes how these scores place the Student far below his same-aged peers, their presence in the PLAAFPs is necessary for building measurable goals. But the scores are not stated in a manner the Parent or Student would be expected to understand. The family advocate, Ms. D, testified that the Parents and the Student were surprised to learn in the Student's senior year that he was not college bound. (Ms. D Testimony) This Hearing Officer finds that this understanding is reasonable, given lack of clarity of these scores. Even if the Parent's appreciated that the

Student was in a self-contained special education program, they could have assumed that he had the requisite skills to graduate and learn a trade based upon the PLAAFPs, if not for the PLAN and EXPLORE scores. It is those scores that ground all the other statements; and a failure to understand them is a failure to grasp fundamentally how the Student's identified disabilities impact his education. Therefore, because the PLAN and EXPLORE scores were stated without sufficient explanation, they are inappropriate. *This Hearing Officer finds accordingly that the PLAAFPs that contain these scores in the relevant IEPs are therefore inappropriate and denied the Student and the Parent a FAPE.*

Finding: For the Student.

b. Do the relevant IEPs address all areas of the Student's suspected disability?

As stated above, the School District's failure during the Statutory Period to re-evaluate the Student and identify his CAPD, his language disorder, his decoding deficits, his developmental coordination disorder and to better understand how these disabilities impact his already-identified specific learning disabilities (in math, written expression and reading) and his ADHD, necessarily leads *this Hearing Officer to conclude that all of the relevant IEPs fail to address all of the areas of the Student's suspected areas of disability.*

Finding: For the Student.

c. Do the relevant IEPs provide appropriate goals and related services in the area of speech/language and voice?

The School District failed to appropriately identify the Student's ongoing language deficits through a proper speech evaluation. Moreover, it is very likely

that a speech/language evaluation would have highlighted the need to assess the Student for CAPD, which he has (and which he has most likely had for his entire school experience). Because the Student has processing deficits from multiple sources (ADHD, Specific Learning Deficits and CAPD), speech/language related services are a necessary partner to his academic interventions. *This Hearing Officer finds that the lack of speech/language goals and related services in the Student's High School IEPs (P#37, 38, 43 and SD #23) targeting is language and processing needs deny him a FAPE.*

That said, this Hearing Officer finds that the Student's Mutational Falsetto, while pronounced, does not negatively impact his education in a manner that would require speech/language services in an IEP. The Student has seen a clinician to address this issue; and some of the IEPs indicate that School District staff will remind the Student to do his vocal exercises, which this Hearing Officer concludes they are under no obligation to do. *Therefore, this Hearing Officer finds that that the lack of speech/language goals and related services to address his Mutational Falsetto does not deny the Student a FAPE.*

Finding: For the Student in Part and For the School District in Part.

- d. Do the relevant IEPs provide appropriate goals and special education services in reading, written language, math, science, and social studies/history?***

Each IEP must include measurable annual goals (both academic and functional) to 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, and meet each of the child's other educational needs that result from the child's

disability.⁶⁷ Annual goals are statements that describe what a student with a disability can reasonably be expected to accomplish within a 12-month period in a special education program.⁶⁸ Annual goals and benchmarks must be objectively measurable, and specific enough to allow the parent and the school district to monitor progress during the school year.⁶⁹ Vague and immeasurable goals can deny a child FAPE.⁷⁰

A review of the Student's goals and benchmarks for all of the relevant IEPs during the Statutory Period leads this Hearing Officer to conclude that there are no appropriate goals in any of the Student's academic areas. Firstly, the goals are based upon unclear and badly stated PLAIFPs, which compromise their efficacy to provide FAPE. Secondly, after reviewing of the goals for reading, written language, math, science, social studies and history for all of the High School IEPs (P #37, 38, 43 and SD #23) this Hearing Officer concludes that the goals are vague, unclear and unmeasurable, and denied the Student a FAPE. *See*, discussion 3(f), above. Moreover, the lack of any academic goals in the 2017 IEP ~ despite the Student's compelling need for academic reinforcement ~ constitutes a FAPE violation.

This Hearing Officer was persuaded by the testimony of the Parent's expert witnesses (Dr. L1, Dr. T, Dr. B and Dr. F, specifically), that the Student's congruence of disabilities (ADHD, Specific Learning Disabilities and CAPD, especially) require a multi-sensory program for all academics with an emphasis

⁶⁷ 34 C.F.R. §300.320(2).

⁶⁸ *Letter to Butler*, 213 IDELR 118 (OSERS 1988).

⁶⁹ *See, A.M. v New York City Dept. of Educ.*, 964 F. Supp. 2d 270 (S.D.N.Y. 2013)

⁷⁰ *Escambia County Bd. of Educ. v Benton*, 406 F. Supp. 2d 1248 (S.D. Ala. 2005).

on reading, written expression and math. The School District has Wilson-trained teachers on its staff, and even had them for the Student's High School⁷¹; yet, the Student was given a reading program that relied less on helping him improve his auditory and reading decoding skills, and relied more on sight words and other memorization skills. This approach was (and is) inappropriate for this Student, and denied him a FAPE.

In the areas of Science and Social Studies and History, the lack of an appropriate reading program for the Student carries over to the goals for these classes. Also, the goals as stated for the High School IEPs are not clearly related to the general education curriculum for these areas (nor explain why the Student's abilities would make that unfeasible). *The Hearing Officer finds that the Student's goals and special education services in reading/English, math, science, social studies/history and written language were inappropriate and denied him a FAPE for his High School IEPs. The Hearing Officer also finds that the lack of any academic goals in the Student's 2017 IEP denies the Student a FAPE.*

Finding: For the Student

e. Do the relevant IEPs provide appropriate special education services across all subject areas?

The Hearing Officer concurs with the IEP decision to have the Student in a self-contained special education program for all of his academics for his High School

⁷¹ The School District attempted to introduce testimony to the effect that the Student had been evaluated for the Wilson program and rejected as ineligible. Yet the School District had no documentation of the specific tests or responses thereto that were given to/by the Student; nor did the School District have any Wilson-trained experts testify as to the specific reasons why Wilson would have been inappropriate for the Student. Without any specific documentation regarding the inappropriateness of Wilson (or any other multi-sensory form of academic instruction), the School District was unable to effectively rebut the unanimous agreement by all of the Parent's experts that the Student needed a multi-sensory academic program like Wilson or LMB.

Years; and to have him in a vocational-themed transition program. However, the lack of a multi-sensory program during the Statutory Period denied him a FAPE. The Student's poor processing and memory skills did not make him a candidate for rote-based instruction such as using sight words.

The Student's disabilities required him to receive a multi-sensory reading program (with an emphasis on decoding) for the Statutory Period and going forward. *This fundamental failure to properly identify a proper special education approach for the Student, despite the fact that a Wilson program was readily available but not provided to the Student constitutes a denial of FAPE.*

Finding: For the Student.

f. Do the relevant IEPs provide appropriate goals and related services in the areas of social emotional and gross motor?

The Student's most recent social work evaluation indicates that the Student struggles with anxiety issues relating to his disabilities, despite his outgoing nature. (SD #30). *As this Hearing Officer has already ruled that the Student should have been re-evaluated in the area of social work prior to his triennial evaluation, she concludes that there should have been a goal for addressing his anxiety in his IEP; and the lack thereof denied the Student a FAPE.*

However, there was no evidence at hearing that the Student lacked the gross/fine motor skills (despite the diagnosis of a developmental coordination disorder) that would have necessitated an occupational therapy goal. The Student did require an occupational therapy evaluation, and may have benefited from accommodations and modifications specifically designed to address any

fine/gross motor deficits he has. *But the failure to have an occupational therapy goal did not deny the Student a FAPE.*

Finding: For the Student in Part and for the School District in Part.

g. Do the relevant IEPs provide appropriate goals and services in the areas of adaptive skills;

The Student's attorney argued that the Student's High School IEPs failed to address his adaptive needs until his graduation was blocked due to this litigation. However, there was no compelling evidence presented by the Student or his witnesses to indicate precisely *which* adaptive needs should have been present in the Student's High School IEPs that weren't in them. The main focus of the Student's witnesses, especially the experts, was on the inadequate academic support the Student received; and less of a focus on his adaptive needs. In fact, many of the (unclear) goals in the Student's IEPs focus on his ability to read a manual, or to learn how to manage money earned by working at a job. *The Hearing Officer concludes that all of the relevant IEPs made an attempt to address the Student's adaptive needs.*

The Student himself testified about his desire for travel training, so that he could become more independent riding public transportation. The Hearing Officer agrees that travel training is (and should be) a part of the Student's ongoing transition program. While the use of travel training in High School would have benefited the Student, this Hearing Officer concludes that the lack of it in the High School IEPs does not constitute a denial of FAPE. *See*, discussion in sub-part (j) below for use of travel training in the Student's transition program.

Finding: For the School District.

RECEIVED 11/9/2017 - SPECIAL EDUCATION SERVICES

h. Do the relevant IEPs provide appropriate goals and services in the area of assistive technology;

This Hearing Officer has already ruled that the Student was denied a FAPE by not receiving an AT evaluation during the Statutory Period. The AT evaluation completed as part of the 2017 triennial evaluation supports the conclusion that the Student from AT during his High School IEPs. Testimony from the Student and the School District AT evaluator shows that the Student's strength with technology would not have necessitated a specific AT goal to provide him a FAPE. *But, the failure to provide AT support and training to the Student at all in his High School IEPs is a denial of FAPE.*

Finding: for the Student.

i. Do the relevant IEPs provide appropriate goals for self-advocacy?

Although there is evidence that the Student struggles with anxiety relating to his disabilities, there is also evidence (including the testimony of the Student himself) to demonstrate that he is a social, extroverted young man. There was no credible evidence presented at hearing that the Student had an impairment regarding his ability to self-advocate; and the Student's demeanor during his testimony (along with the testimony of his teacher Mr. P) convinced the Hearing Officer that the Student is able to ask for help and make his needs known, when necessary. *Therefore, there is no evidence that the Student required a goal for self-advocacy, and the lack thereof did not deny the Student a FAPE.*

Finding: for the School District.

j. Do the relevant IEPs provide an appropriate transition plan?

The *IDEA* requires every IEP of a child over the age of 16.⁷² All of the Student's relevant IEPs during the Statutory Period contained appropriate transition plans⁷³, save for two important elements: (1) each IEP had the Student (who is clearly in need of transition services until the day before his 22nd birthday) graduating from high school prior to the day before his 22nd birthday; and (2) the vocational programs set forth in all of the High School IEPs and the transition program he is currently in do not account for the fact that the Student still needs multisensory reading, writing and math interventions and travel training to enable him to become employable, even in a supported environment. (P# 37, 38, 43, 53 and SD #23) The Students most recent public and private evaluations clearly do not have him performing academically at a minimal level to be able to read, write or do math for a job. While the focus on vocational training is appropriate, the Student does not have the academic skills he needs to graduate or to become employable. *This Hearing Officer finds that the decision to graduate the Student before he turns 22, the lack of travel training, and the lack of multisensory reading, writing and math classes deny the Student a FAPE in his transition plans.*

Finding: For the Student.

Issue #4: Whether, for the Statutory Period, the School District appropriate implemented the Student's IEPs in the areas of: speech/language, reading, written language, math, science, social studies/history, special education services assistive technology, self-advocacy and transition planning.

⁷² 34 C.F.R. §300.320(b). In Illinois, a transition program must be in effect by the time a child turns 14 1/2 years old. 105 ILCS 5/14-8.03(a-5)

⁷³ As defined by 34 C.F.R. §300.320(b).

The Parents/Student submit that the School District failed to implement the Students then-applicable IEPs *as they were written* in the areas listed above.⁷⁴ The School District submits that it implemented the Student's IEPs appropriate during the Statutory Period. The School District asks this Hearing Officer for a ruling in its favor and to deny all of the Students requested relief.

At hearing, the School District put on witnesses and documents to indicate that the Student's IEPs were implemented during the Statutory Period. The Student argues that the Student didn't receive the social work services in his transition plan while he was in High School. Although the Hearing Officer notes the disconnect between a transition plan that calls for social work services and a lack of social work services in the same IEP (P #37, 38, 43, SD #23), the Hearing Officer concludes that the Student's IEPs did not contain social work minutes. Therefore, there would be no duty to implement them.⁷⁵ Likewise, as noted above, the School District put on credible witnesses that the Student's IEPs were implemented as written. *In light of any compelling evidence to the contrary, this Hearing Officer concludes that there is not enough evidence to conclude that*

⁷⁴ The Parents ask for the following relief (a) That the School District provide an appropriate transition program for the Student; (b) That the School District should provide at least two (2) hours a day of intensive reading and written language instruction; (c) That the School District provide math instruction; (d) That the School District provide compensatory education in the form of remedial reading/written language instruction through Lindamood Bell; (e) That the School District provide academic tutoring in all academic subjects; (f) That the School District should reimburse the Student/Parents for their assistive technology expenditures; and provide additional assistive technology for the Student; (g) That the School District provide compensatory speech, language and voice therapy to the Student; (h) That the School District provide compensatory and on-going psychotherapy and counseling services; (i) That the School District provide compensatory and on-going occupational therapy; and, (j) That the School District provide oral language curricula.

⁷⁵ The Hearing Officer has already ruled that the lack of social work services in the Student's High School denied him a FAPE.

the Student was denied a FAPE because the relevant IEPs during the Statutory Period were not implanted as written.

Finding: for the School District.

Compensatory Education

Hearing Officers have the authority to award compensatory education if necessary to cure a prior denial of FAPE.⁷⁶ Compensatory education “should aim to place disabled children in the same position they would have occupied but for the school district’s violations of the *IDEA*.”⁷⁷

This Hearing Officer has found that the Student was denied a FAPE when, during the Statutory Period, the School District:

- Failed to properly evaluate the Student in all areas of suspected disability;
- Failed to create IEPs that were designed to provide a FAPE to the Student, especially in that they failed to provide a multi-sensory program in reading, written expression and writing and related services in speech language, social work;
- Created a transition plan that (1) graduates the Student instead of providing transition services until the day before his 22nd birthday; (2) fails to address his continuing academic needs for multi-sensory reading, written expression and math; and, (3) fails to provide travel training.

The School District has not addressed the Student’s needs for a multi-sensory program to address his deficits in decoding, his deficits in writing and math, his deficits due to his CAPD, and his need for social work for the majority of his

⁷⁶ *Bd. of Ed. Of Oak Park & River Forest High School Dist. 200 v Todd*, 79 F.3d. 654 (7th Cir. 1996); *Evanston Cmty. Sch. Dist. No. 65 v Michael M.*, 356 F.3d 798 (7th Cir. 2004).

⁷⁷ *Petrina W. v City of Chicago Public School District*, 2009 WL 5066651 at *3 (N.D. Ill. Dec. 10, 2009).

school career. (P. # 4, 5A, 12-21, 24-26, 30-33, 35-39, 43-46, 53-54, 56,59,62-67). The Student has reached an age where he is wanting appropriate vocational programming to qualify him for gainful (and perhaps supported) employment. The Student requests the following compensatory education: remedial reading/written language instruction through Lindamood Bell; speech/language and voice therapy; social work services; and occupational therapy. Other than asking the Hearing Officer to reject the Student's request for compensatory education altogether, the School District offers no formula or evidence for reducing an amount of compensatory education.

This Hearing Officer has already ruled that the Student did not require voice therapy or occupational therapy as related services. But the Hearing Officer agrees that the Student requires intensive remedial multi-sensory reading, math and written language instruction; and that he requires social work services for at least the last two years. *See*, discussion above.

In calculating the amount of compensatory education to award the Student, this Hearing Officer relies upon the Parent's experts, Dr. T, Dr. B, Dr. L and Dr. F. This Hearing Officer concludes that had the Student received multi-sensory reading, math or written language instruction when he was in grade school, or even middle school, many of his current challenges would have been remediated, and he would be further towards his goal of gainful employment. These same witnesses gave credible testimony that the Student can still make noticeable improvement in his reading, writing and functional math skills if intensive multi-sensory academic intervention is awarded in addition to any other award by this Hearing Officer.

RECEIVED 11/9/2017 - SPECIAL EDUCATION SERVICES

Based upon the evidence entered at hearing this Hearing Officer finds that the level of compensatory education set forth below will serve to place the Student in the place he would have been had he not been denied FAPE (as indicated in the above ruling).

Accordingly, this Hearing Officer chooses to accept the recommendations of Dr. T, Dr. L, Dr. B and Dr. F and award compensatory damages in the following amounts and durations (including door-to-door transportation for any location the Student cannot reach independently by public transportation):

- speech/language services for 60 minutes per week (“mpw”) for 2 years to address the Student’s language deficits but not for voice therapy;
- training in the use of FastForward (to be used independently, if possible) and to address his CAPD for one (1) hour/day three (3) times/week for one hundred (100) hours, in addition to providing the program for him to use at home. If the Student cannot use FastForward independently at home, the School District is hereby ordered to provide an adult to assist the Student with using the FastForward Program in the amounts listed above;
- Aural therapy for 60 mpw for 30 weeks (to address the Student’s CAPD issues) with either a certified audiologist or a certified speech/language therapist with experience in providing aural therapy;
- counseling services with a certified social worker to address his anxiety issues for twenty-five (25) sessions of one hour each; and,
- Lindamood Bell (“LMB”) remedial academic services to address the Student’s deficits in reading, written expression and mathematics for four (4) hours/day, five (5) days/week for a minimum of six (36) weeks (to be delivered by a LMB trained teacher) for twelve weeks respectively during the summers of 2018, 2019 and 2020.
- The School District is ordered to create a log of the individual services provided in the amounts set forth above. If the Student is unable to attend any session due to illness, the School District will make up any missed sessions until all are completed. If the Student, who is a legal adult, refuses to attend any of the sessions outlined above, the School District will not need to make up any sessions refused by the Student, so long as it has written documentation of the Student’s refusal to attend a session.

Order

Based upon the above Findings of Fact and Conclusions of Law, **and in addition to the compensatory education ordered above**, it is hereby ordered:

1. The School District is to reimburse the Student's attorney, the Parents or the provider for the cost of Dr. T's, Dr. L's and Dr. F's private evaluations and reports (contingent upon proof of payment by the Student's attorney, the Parents or proof that the amount of the evaluation is owing to the individual provider).
2. The School District is to conduct a full re-evaluation of the Student at public expense within one (1) year from the date of this ruling and by evaluators with the appropriate Illinois certification and licensure to complete the evaluation. The re-evaluations (which must include a written report) must include:
 - a. An updated neuropsychological evaluation, with an emphasis in intelligence testing, verbal/nonverbal processing, attention/executive functioning, academic achievement, and anxiety/depression, and any other areas the evaluator deems necessary. The evaluator performing this evaluation is ordered to observe the Student at his current placement and to interview his LMB instructors, all of his related service providers, and to observe the Student using FastForward independently. The evaluator is further ordered to make a firm recommendation as to the Student's transition programming needs for the 2018-2019 school year.
 - b. An updated social/emotional history of the Student;
 - c. An updated occupational therapy re-evaluation of the Student.
 - d. An updated audiology evaluation to reassess the Student's CAPD.
 - e. The Student is ordered to cooperate with the evaluations set forth in Paragraph 4 above; and if the Parent refuses to give

consent, this Hearing Officer orders that the re-evaluation take place over the Parents' lack of consent.

3. The parties are to convene an IEP Meeting no later than twenty (20) days after the date of this ruling to consider the School District's AT evaluation report, Dr. T's evaluation report, Dr. L's evaluation report and Dr. F's evaluation report, and to make the following changes to the Student's IEP:
 - a. The Student is to remain at his current placement at ICRE until the end of the 2017-2018 school year, to complete his vocational programming;
 - b. In addition to his placement at ICRE, the Student is to receive multi-sensory tutoring by a certified special education teacher for one hundred and twenty (120) minutes/week for the remainder of the 2017-2018 school year in the subjects of: functional reading, math and written expression. The Student's tutor must be certified to teach a multi-sensory reading, math and written expression curricula (such as Wilson, Orton Gillingham or LMB);
 - c. The Student's transition program is to include 60 mpw of travel training for the remainder of the 2017-2018 school year;
 - d. The Student's IEP is to provide an explanation of the compensatory education services to be provided pursuant to this Final Determination and Order, and to set for a specific schedule for the provision of the compensatory education services enumerated above;
 - e. The Student is to remain in a transition program until the day before his 22nd birthday; and,
 - f. Any additional recommendations the IEP team wishes to make in accordance with this Final Determination and Order.

In accordance with 105 ILCS 5/14-8.02a(h), within 90 school days of receipt of this Order, the school district must submit proof of compliance to:

Illinois State Board of Education
Program Compliance Division

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100 North First Street
Springfield, IL 62777-000

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 must specify the portions of the decision for which clarification is sought. A copy of the request must 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.

IT IS SO ORDERED.

Dated: October 14, 2017

Jennifer A. Leisner
Impartial Due Process Hearing Officer
100 Illinois Street
St. Charles, Illinois 60174

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[Redacted]

[Redacted]

[Redacted]

[Redacted]	Dr. F
[Redacted]	Ms. B
[Redacted]	Dr. T
[Redacted]	Ms. D
[Redacted]	Dr. L1
[Redacted]	Ms. B
[Redacted]	Ms. S1
[Redacted]	Ms. S2
[Redacted]	Student
[Redacted]	Ms. W
[Redacted]	Ms. G
[Redacted]	Mr. I
[Redacted]	Ms. M1
[Redacted]	Ms. P
[Redacted]	Ms. S3
[Redacted]	Mr. P
[Redacted]	Ms. R
[Redacted]	Ms. M2
[Redacted]	Dr. L2
[Redacted]	Ms. S4
[Redacted]	Ms. C
[Redacted]	Dr. D
[Redacted]	Ms. S5
[Redacted]	Ms. R2

[Redacted]

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

M.E., a minor, by and through
his Parent(s),

Petitioners,

- against -

Case No. 2016-0459

Chicago Public School District #299, Jennifer A. Leisner

Hearing Officer

Respondent.

CERTIFICATE OF SERVICE

I, JENNIFER A. LEISNER, certify that on October 14, 2017, copies of the Final Determination and Order were served upon the following persons in the manner indicated:

Sent Electronically via Email Only

Ms. Maureen Graves, Esq.
Law Offices of Maureen Graves
1326 Madison Park
Chicago, Illinois 60615
maureen@maureengraves.com

Ms. Lucille Blackburn, Esq.
Due Process & Mediation
42 W. Washington, 2nd Floor
Chicago, Illinois 60602
lblackburn@cps.edu

Sent Electronically via Email Only

Andrew Eulass, ISBE Due Process Coordinator
AEULASS@isbe.net

Wanda Schoneweis
wshonew@isbe.net

Dated: October 14, 2017
Jennifer A. Leisner
Impartial Due Process Hearing Officer
100 Illinois Street, Suite 200
St. Charles, IL 60174

/s/ Jennifer A. Leisner

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