

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

SEP 11 2017

[REDACTED]

Student,

v.

Case No. 2017-0225  
(Reinstated Case)

[REDACTED]

School District.

Philip C. Milsik,  
Impartial Hearing Officer

**FINAL DETERMINATION AND ORDER**

**PROCEDURAL HISTORY**

On May 12, 2017, a special education due process hearing was initiated by [REDACTED] ("Mother") and [REDACTED] ("Father") (collectively "Parents") on behalf of themselves and [REDACTED] ("Student") pursuant to the Individuals with Disabilities Education Act ("IDEA") and Article 14 of the Illinois School Code. This was a reinstatement of a hearing request previously filed by the District earlier in 2017 that was withdrawn. This hearing officer was reassigned to the case on May 17, 2017. The District filed a Response on May 22, 2017. Mediation was unsuccessful.

The Pre-hearing Conference was held on June 27, 2017, and August 1, 2017, and the Pre-hearing Order and Report was issued on August 6, 2017. During the June 27, 2017, conference counsel and the hearing officer agreed to hearing dates of August 14-18, 2017. However, a dispute over access to student records and the need for the hearing officer to review documents *in camera* to determine whether they should be released to the Parents required the first day of the hearing to be delayed until August 18, 2017. The hearing was also convened on August 23, 24, and 25, 2017. Closing arguments were submitted on August 28, 2017, and the record was closed on that date. The hearing was held at the District's [REDACTED] on August 18 and 23, 2017, and at the law offices of [REDACTED] on August 24 and 25, 2017.

**BACKGROUND**

The Student is eleven years old and will be entering the sixth grade in the 2017-2018 school year. His date of birth is [REDACTED]. He resides with his parents, two brothers and a younger sister. One of his brothers is his fraternal twin. They are residents of the District.

Student attended ██████ School for third and fourth grades. The Student's Mother testified that she first started to have concerns about the Student in the third grade, during the 2014-2015 school year. Mother sent e-mails to Ms. L█████, the classroom teacher, about plummeting grades and found out that Student had not turned in some assignments. She also contacted the school principal, Mr. ██████, about her concerns. (Exhibits 27 and 28). She was especially concerned that he was receiving an "F" in writing. She testified further that he was very anxious about school, had difficulty completing his homework, and was quiet and introverted.

After the third grade the Student was referred by his family's therapist, Dr. ██████, for a psychological evaluation at the Pediatric Developmental Center of ██████ Medical Group. The evaluation was conducted on June 11, 2015, by ██████, M.A., under the supervision of ██████ M█████, Ph.D., a licensed clinical psychologist. (Exhibit 29). This evaluation found that the Student's cognitive skills ranged from high average to very superior, placing him in the gifted category. (Exhibit 29, page P-13-14). He had high average scores in reading and math and superior oral language skills. However, his writing scores, while average, were much lower than expected based on his other skill levels. The evaluation also determined that the Student met the criteria for Attention-Deficit/Hyperactivity Disorder Combined Type ("ADHD"). Further, recommendations were made that he have an occupational therapy ("OT") evaluation to look into his sensory behaviors and handwriting issues, and that he work on improving his social skills. Individual therapy for the Student was also recommended. (A list of school recommendations is found in Exhibit 29 on pages 16-19.)

On August 31, 2015, Mother e-mailed the ██████ School principal, Mr. A█████, requesting special education services for the Student and offering the M█████/P█████ evaluation report. On September 1, 2015, Mr. A█████ e-mailed L█████ N█████, the school's case manager, asking her to reach out to the Mother. After waiting a few days, Mother sent another e-mail to Mr. A█████ on September 4, 2015. (Exhibit 30). She met with Ms. N█████ in mid-September, then heard nothing back. She then e-mailed Ms. N█████ on September 30, 2015, (Exhibit 32) asking for a meeting and either a 504 plan or IEP for the Student. On October 5, 2015, Mother made a request to Mr. A█████ for a full individualized evaluation of the Student to determine his eligibility for special education.

The request was forwarded to Ms. N█████ the next day. On October 19, 2015, a determination was made to deny the Mother's request on the grounds that the request was "not appropriate at this time". (Exhibit 33). The denial notice went on to state that the Student's grades were As, Bs and Cs, and his standardized test scores were within the high average to above average range. The notice was signed by Ms. N█████. The Parents were not invited to the October 19, 2015, meeting.

During this time, Mother was working with the Student's teacher, Ms. H█████ in an effort to have some modifications and accommodations implemented for the Student. Ms. H█████ made an effort to work with the Mother and was responsive to her concerns about homework. (Exhibit 34). The Parents also followed up on the recommendations of Dr. M█████ and Ms. P█████ by engaging Ms. P█████ to provide individual therapy (Testimony of ██████ H█████) and by having the Student evaluated by an occupational therapist..

The OT evaluation was conducted on September 1, 2015, at [REDACTED] Medical Group by [REDACTED] S [REDACTED] OTR/L. Ms. S [REDACTED] recommended a Zones of Regulation Group at the Pediatric Developmental Center, use of sensory breaks throughout the day, and increased participation in community-based gross motor activities for social and sensory opportunities. (Exhibit 31).

Following the denial of the Mother's request for a full individualized evaluation, she continued to communicate with Ms. N [REDACTED], Mr. A [REDACTED] and Ms. H [REDACTED] regarding the Student's struggles with homework. (Exhibits 35 and 36).

On November 10, 2015, Dr. H [REDACTED] wrote a letter to the [REDACTED] School also signed by the Parents again requesting an evaluation of the Student. The letter was received on November 12, 2015. Dr. H [REDACTED] noted the Student's significant inattention, distractibility, and difficulties with planning and organization. She mentioned her referral of the Student for a psychological evaluation and the Machabanski/Pollman diagnosis of ADHD Combined Type. She asked for an IEP eligibility-multidisciplinary meeting with the school's IEP/504 team to review the results of the psychological evaluation. (Exhibit 38). There was no response to Dr. H [REDACTED]'s letter. (Testimony of Dr. H [REDACTED]).

Dr. H [REDACTED] wrote again to Mr. A [REDACTED] on December 18, 2015, asking for a meeting to "discuss strategies that may assist" the Student in the classroom. (Exhibit 53). This resulted in an informal meeting on January 15, 2016, with Mr. A [REDACTED], Ms. H [REDACTED] the Mother and Dr. H [REDACTED] to discuss possible supportive strategies for the Student. (Exhibit 54 and H [REDACTED] testimony).

On February 3, 2016, the Parents wrote to Mr. A [REDACTED] once more requesting a meeting to review the results of the 2015 outside evaluations and noting the Student's increased irritability, nighttime enuresis, and decrease in self-esteem. (Exhibit 8). A meeting was scheduled for March 2, 2016.

Participants in the March 2, 2016, meeting were the Parents, Mr. A [REDACTED], Ms. H [REDACTED] Ms. N [REDACTED], a school psychologist, a school occupational therapist, a school social worker, a speech therapist, a school nurse and Dr. H [REDACTED]. The school staff determined that the Student was not eligible for special education due to his grades and standardized test scores, despite the outside evaluation results, the Parents concerns, and the inattentiveness and distractibility at school.

There apparently was a misunderstanding as to whether the Student was determined eligible for a 504 plan at the March 2, 2016 meeting. Dr. H [REDACTED] and the Mother testified that they were led to believe that a 504 plan would be drafted within a month and shared with the Parents for feedback. (See, also Exhibit 54). However, Ms. N [REDACTED] issued a Student Referral Request Denial Notice to the Parents after the meeting stating that a "potential" 504 plan "was discussed" and "at this time differentiated instruction is meeting his academic needs". (Exhibit 40).

A 504 plan was not provided by the [REDACTED] School staff following the March 2, 2016, meeting as was anticipated by the Parents and Dr. H [REDACTED] (See, Exhibits 41 and 42, e-mails from Mother to Mr. A [REDACTED] dated March 27 and 29, 2016, inquiring about the status of the 504 plan.) However, the teacher, Ms. H [REDACTED] continued to implement some classroom accommodations and reported to the school social worker, [REDACTED] K [REDACTED], that the Student was having difficulty with focus, impulsivity, distractibility, and

answering inferential questions. She observed a lot of fidgeting and an inability to work collaboratively with other students. (Exhibit 59).

Ms. K [REDACTED] started to observe the Student on March 9, 2016, as part of a 504 plan assessment, and on April 12, 2016, the Student began to participate in group counseling sessions with Ms. K [REDACTED]. There was no 504 plan at this time. (Exhibit 58). Ms. K [REDACTED] provided weekly group sessions and consultation services for the remainder of the 2015-2016 school year. (Testimony of K [REDACTED], Exhibit 58).

At approximately the same time that Ms. K [REDACTED]'s services commenced, the Student's psychiatrist, Dr. Y [REDACTED], wrote a letter dated April 6, 2016, to the school regarding her March 29, 2016, evaluation of the Student. In her letter Dr. Y [REDACTED] mentioned a diagnosis of ADHD combined type and Generalized Anxiety Disorder. She noted that, in addition to the ADHD, "he also has many anxiety symptoms particularly over school that are contributing to his poor attention." She also noted that his sensory sensitivities contribute to his ADHD symptoms. Dr. Y [REDACTED] requested that the school implement school-based interventions under a 504 plan because he requires services and accommodations and they will help to assess whether medications are warranted. Dr. Y [REDACTED] attached a list of recommended intervention strategies and her phone number if there were questions. (Exhibit 43). There is no evidence that the school responded to Dr. Y [REDACTED]'s letter. Dr. Y [REDACTED] wrote a similar letter to the school on April 14, 2016, again seeking a 504 plan for the Student. (Exhibit 51).

Finally, on June 8, 2016, a 504 plan meeting was held at [REDACTED] School. Attending the meeting were the Parents, Ms. H [REDACTED], Ms. N [REDACTED], Mr. A [REDACTED], Ms. P [REDACTED], Dr. G [REDACTED], Director of the School Age Clinic of [REDACTED] Children's Hospital, Ms. K [REDACTED] and a school nurse. Dr. H [REDACTED] participated by phone. At this meeting it was determined that the Student should have a 504 plan. The 504 plan was prepared (Exhibit 12) and shared with the Parents and Dr. G [REDACTED] at the end of the meeting. The Parents made another request for a full individualized evaluation at this meeting. (Testimony of Dr. G [REDACTED] and Exhibit 61).

Before the 2016-2017 school year began, on August 30, 2016, Dr. Y [REDACTED] wrote a letter regarding the Student and his school placement. She noted his severe agitation when [REDACTED] Elementary School is mentioned, and recommended "a well-structured nurturing environment" where her previous recommendations could be implemented, noting the Parents' request for a transfer to a different school. (Exhibit 52).

A meeting to discuss the Parents' request for a "best interests" change of schools was held on August 31, 2016, at [REDACTED]. The Parents, Dr. G [REDACTED], Dr. H [REDACTED], and Mr. A [REDACTED] participated in the meeting along with three District administrators, K [REDACTED], M [REDACTED], and McC [REDACTED]. Parents requested the [REDACTED] Elementary School. Dr. Y [REDACTED]'s letter of August 30, 2016 was presented at the meeting. Mr. M [REDACTED], the Network Chief, agreed to look into [REDACTED], and if [REDACTED] was not available he would provide the names of other schools in the vicinity. [REDACTED] did not have a spot for the Student, but it was subsequently agreed that the Student would attend [REDACTED] School for the fifth grade. (Testimony of Mother and G [REDACTED], Testimony of E [REDACTED], Exhibit 64).

The Student attended [REDACTED] School in 2016-2017. R [REDACTED]-E [REDACTED] was his teacher except for math and science. W [REDACTED] was his science and math teacher. (Testimony of R [REDACTED]-E [REDACTED] and W [REDACTED]). He received school social work

services from ██████ H█████ pursuant to his 504 plan starting on September 23, 2016. (Testimony of H█████).

On October 12 2016, the Parents filed a State Complaint with the Illinois State Board of Education regarding, among other things, the alleged failure by the District to implement the Student's 504 plan and failure to respond to the Parents' most recent request for a full individualized evaluation of the Student. On October 14, 2016, the Parents also filed a discrimination complaint with the Office for Civil Rights of the U.S. Department of Education on essentially the same grounds as the State Complaint. (Exhibits 69 and 71).

On October 18, 2016, a notice was sent to the Parents regarding a conference to be held at ██████ School on October 28, 2016, for the stated purpose of reviewing the Student's eligibility and needs for special education and related services and, if determined eligible, to develop an IEP. (Exhibit 66).

Starting on October 24, 2016, Dr. G█████'s team at the School Age Clinic (SAC) conducted a multidisciplinary evaluation of the Student. Dr. G█████ testified that the SAC was originally created as an extension of the Newborn Intensive Care Unit (NICU) to follow up on children who were NICU patients as they encounter challenges of early elementary school. The Student was born prematurely and was a NICU patient. Therefore, it was determined that an evaluation by SAC was appropriate. The SAC evaluation consisted of a psychoeducational assessment by Dr. G█████, and OT evaluation and a speech and language evaluation.

The SAC evaluation confirmed the previous diagnoses by outside evaluators of ADHD combined type and Generalized Anxiety Disorder. It also found issues concerning expressive language and executive functioning and organizational skills. A series of recommendations were made by the SAC team for implementation at school and in the home. (Exhibit 47, pp. SD 371-376) The final report was prepared on December 6, 2016 and shared with the District team prior to the December 16, 2016, eligibility meeting (see below).

Contrary to the October 18, 2016, notification to the Parents, the actual purpose of the October 28, 2016, meeting at ██████ School was to make an assessment determination in preparation for an evaluation of the Student by the District at the request of Mr. K█████, who had intervened after he was contacted by Dr. G█████. (Testimony of G█████). At the meeting the Parents expressed their frustration about the perceived lack of implementation of the 504 plan and the Student's continuing difficulties with writing, attention, anxiety and refusal to attend school. (Testimony of H█████, Exhibit 56; testimony of G█████).

The District then conducted a school psychological evaluation, a school nurse assessment and a social work evaluation. (Exhibits 9 and 44). Ms. H█████ conducted the social work evaluation and her report is dated December 16, 2016. Her report confirmed previous evaluations and reports from the Parents and teachers regarding deficiencies in attention, focus, hyperactivity, organizational skills, self-esteem, peer relationships, and problem solving with others. The Strengths and Difficulties Questionnaire (SDQ) completed by the Parents, teachers and Student indicated social and emotional problems. She recommended the continuation of school social work services. No nursing services were recommended by the school nurse.

The psychological evaluation was conducted by Dr. [REDACTED] A [REDACTED] on November 28, December 5 and December 9, 2016. Dr. A [REDACTED] accepted the findings of the M [REDACTED]/P [REDACTED] evaluation (Exhibit 29) from 2015 as to the Student's intellectual functioning and anxiety. Dr. A [REDACTED] agreed with the ADHD diagnosis. On the WIAT III assessment of academic achievement the Student's math and reading scores were good, but he was found to be struggling with writing and written expression. However, the Test of Written Language (TOWL) IV scores showed average skills. In Dr. A [REDACTED]' opinion the Student did not meet the criteria for a Specific Learning Disability. However, he recommended a continuation of school social work services and ADHD supports and had concerns about written expression. (Testimony of A [REDACTED]).

Following the completion of the District's evaluation an eligibility determination meeting was held for the Student on December 16, 2016. In attendance were the Parents, the Student's teachers, a special education teacher, [REDACTED] P [REDACTED], the District Representative for [REDACTED] School at the time, the case manager [REDACTED] A [REDACTED], Dr. A [REDACTED], Ms. H [REDACTED], the school nurse, Dr. G [REDACTED] and Dr. H [REDACTED]. A determination was made by the District's team that the Student was not eligible for special education and related services. A determination was made that no disability had been identified. (Exhibit 10, p. SD-73). The determination was based on the Student's performance "at standard" on achievement tests, grades of As, Bs and Cs, and a finding of no Specific Learning Disability.

The Parents, Dr. G [REDACTED] and Dr. H [REDACTED] disagreed with the District's team and asked for an IEP for the Student. The Parents also orally requested an independent educational evaluation (IEE) at the District's expense. The Parents followed up with a written IEE request on January 11, 2017, which prompted the initiation of a due process hearing by the District challenging the Parents' request on January 12, 2017, pursuant to 34 C.F.R. §300.502(b)(2)(i). (Exhibit 72).

The District then convened a meeting on January 20, 2017, to discuss the Student's 504 plan. The 504 plan was revised to add accommodations regarding a daily check-in/check-out system and communication between school and home. (Exhibit 24).

The parties participated in State-sponsored Mediation in an effort to resolve the pending due process hearing. The result was a Mediation Agreement and withdrawal of the hearing request. The parties agreed that District school psychologist [REDACTED] H [REDACTED] and Dr. G [REDACTED] would review Dr. A [REDACTED]' test protocols and re-score portions of his testing that were questioned by the Parents and Dr. G [REDACTED]. This resulted in several revised scores that Ms. H [REDACTED] and Dr. G [REDACTED] agreed upon. Ms. H [REDACTED] also conducted some additional observations of the Student. A report was prepared by Ms. H [REDACTED] on April 12, 2017. (Exhibit 45). The new test scores on the TOWL-IV and WIAT-III did not change the findings that the Student functioned in the average range on the changed items. However, on two subtests under the WIAT-III, sentence composition and sentence building, the Student scored slightly below average. (Testimony of G [REDACTED] and H [REDACTED]).

Ms. H [REDACTED] did not identify a Specific Learning Disability. She believed the Student would be best served by a 504 plan and that the classroom writing curriculum would be sufficient to address his needs. She also testified that the school social work services were appropriate for the Student. (Testimony of H [REDACTED]). In Dr. G [REDACTED]'s opinion, however,

the Student has a disability in written expression and should have an IEP to address his educational and related services needs. (Testimony of G [REDACTED]).

Finally, prior to the Parents' hearing request, they obtained an independent speech and language evaluation for the Student at [REDACTED] and Associates on April 29 and May 7, 2017. [REDACTED] M [REDACTED], a licensed speech and language pathologist, conducted the evaluation. The Parents requested the evaluation and mentioned as their concerns writing and pragmatics.

Mr. M [REDACTED] reviewed the SAC evaluation report of December 6, 2016, which included a speech and language component. He found that the Student's expressive language scores, while in the average range, were significantly lower than his receptive language scores. In addition, below average scores were found in the area of conventions of print, which includes grammar, syntax, punctuation and spelling. The Student's vocabulary, syntax, grammar and overall elaboration were poor and immature in comparison with his peers. (Testimony of M [REDACTED]).

Further, Mr. M [REDACTED]'s testing revealed below average abilities for understanding non-literal language such as sarcasm, idioms, metaphors, similes, and non-verbal cues. This would affect his understanding of humor, social cues, and conversational abilities. He scored at the 5<sup>th</sup> percentile on a making inferences test. Mr. M [REDACTED] testified that non-literal demands will increase for the Student. He recommended that the Student receive direct speech and language services to address pragmatics of language and special education resource services to work on his writing skills. He noted that the Student is behind in these "building blocks" and needs multiple sessions per week for remediation. He recommended an IEP for the Student. (Exhibit 2 and Testimony of M [REDACTED]).

## JURISDICTION

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

## ISSUES

1. Between May 12, 2015 and the close of the hearing, should the District have identified the Student as a child with a suspected disability or disabilities under IDEA and, if so, did the District conduct a timely individualized and comprehensive evaluation of the Student?
2. Is the Student eligible for special education and related services under IDEA?
3. If the Student is eligible as a student with a disability under IDEA, what goal areas should his IEP address?
4. Did the District deny the Student a free appropriate public education (FAPE) between May 12, 2015 and the close of the hearing by failing to develop an IEP for the Student that appropriately addressed his special education and related services needs?

5. Did the District violate the procedural requirements of IDEA by (a) failing to properly convene meetings in a timely manner to consider outside evaluations of the Student obtained by the Parents, or (b) failing to properly determine the Student's eligibility under IDEA and, if so, did the procedural violations impede the Student's right a FAPE, significantly impede the Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student, or cause a deprivation of educational rights?
6. Is it a proper exercise of the hearing officer's authority to order the District to enroll the Student in the [REDACTED] Elementary School, the Parents' preferred school for the 2017-2018 school year?
7. If the Student has been denied a FAPE, should the District be ordered to provide compensatory services for the Student and, if so, what are the nature, scope and duration of the compensatory services?
8. Should the District be ordered to reimburse the Parents for the costs of the outside evaluations and therapy services they obtained for the Student between May 12, 2015 and the close of the hearing?
9. Should the hearing officer grant other relief as he determines to be appropriate?

## **FINDINGS OF FACT**

### **A. The Student**

1. Student is 11 years-old and entering the sixth grade in 2017-2018. It is undisputed that his intellectual functioning is at the very high average to superior range. (Exhibit 29).
2. Student has ADHD Combined Type, a disability that significantly impacts his educational progress. He requires school-based supports and accommodations to address inattention, distractibility, impulsivity, and poor organizational and planning skills. (Exhibits 29, 47, Testimony of Mother, H [REDACTED] and G [REDACTED] and Exhibit 47). His ADHD is exacerbated by poor sensory regulation that requires interventions and accommodations for poor frustration tolerance and increased activity levels and distractibility. (Exhibit 31).
3. Student also has a language impairment that affects his expressive language skills, particularly in the areas of conventions of print (vocabulary, syntax, grammar, punctuation, spelling) and pragmatics of language. (Exhibit 2, Testimony of M [REDACTED], Testimony of Mother). He requires specialized instruction and direct speech and language therapy for his language impairment. (Testimony of M [REDACTED]). He also requires direct small group school social work services to address his social communication and group problem solving skills. (Testimony of H [REDACTED] and K [REDACTED])

4. Student has Generalized Anxiety Disorder (Exhibit 43) and low self-esteem and requires direct individual and small group school social work services to provide appropriate behavioral supports in the school environment. (Exhibit 43, Testimony of Mother, Testimony of H [REDACTED]).

## **B. Child Find and Evaluations**

5. Parents first raised their concerns about the Student with the District late in the 2014-2015 school year when he was at [REDACTED] Elementary School for the third grade because his grades were plummeting and he was receiving an "F" in writing. At that time they were first informed that the Student was missing some assignments. (Testimony of Mother, Exhibit 27).
6. Parents obtained an outside evaluation of the Student in June, 2015 (Exhibit 29) and shared the evaluation report with the case manager and principal of Lincoln at the beginning of the 2015-2016 school year. (Testimony of Mother). The Parents requested an initial evaluation of the Student on September 16, 2015 and the request was denied the same day by the [REDACTED] team per a Referral Decision signed by the case manager stating that the Student was at or above grade level in his grades and standardized tests. (Exhibit 6).
7. Parents persisted in their efforts to obtain assistance and supports for the Student at Lincoln via the principal and case manager at the beginning of the 2015-2016 school year, and worked directly with the classroom teacher to implement informal interventions and accommodations. (Testimony of Mother, Exhibits 30, 32). Parents also obtained an outside OT evaluation of the Student by [REDACTED] S [REDACTED] in September, 2015. (Exhibit 31).
8. Parents submitted another request for an evaluation of the Student by the District to the [REDACTED] principal on October 5, 2015. The request was denied on October 19, 2015, without meeting with the Parents. The Notification of Decision was based on the Student having received As, Bs and Cs in all subject areas and above average to high average standardized achievement scores. The evidence fails to show that a meaningful consideration was made of the results of the outside evaluations and recommendations of the Parents' outside evaluators. (Exhibit 33).
9. Following the October 19, 2015, Notification of Decision, the Parents continued to express concern to the case manager, teacher and principal about the Student's difficulty and frustration with homework assignments. (Exhibits 35 and 36).

10. On November 10, 2015, Dr. H [REDACTED], the family's therapist and currently the Students' individual private therapist, wrote to the [REDACTED] School requesting a full and individualized evaluation of the Student. The Parents signed the H [REDACTED] letter. The letter was received at [REDACTED] on November 12, 2015. (Exhibit 38). There was no response to the H [REDACTED] letter by [REDACTED] School staff. (Testimony of H [REDACTED]).
  
11. Dr. H [REDACTED] sent another letter to the principal of [REDACTED] School on December 18, 2015, requesting a meeting to discuss strategies to address the Student's needs. (Exhibit 53). In response, an informal meeting was held on January 15, 2016, with the Mother, Dr. [REDACTED], Principal A [REDACTED] and the teacher to discuss the Student's progress and strategies to assist him in the classroom. On February 3, 2016, the Parents requested another meeting and the case manager, Ms. N [REDACTED], scheduled the meeting for March 2, 2016. (Testimony of H [REDACTED], Exhibit 54).
  
12. At the March 2, 2016, meeting, the Student was determined ineligible for an IEP. The Parents and Dr. H [REDACTED] believed the [REDACTED] team had agreed to write a 504 plan for the Student within a month after this meeting and share it with the Parents for comments. However, the Referral Decision of March 2, 2016, signed by Ms. N [REDACTED] stated that a "potential 504 plan" was discussed and, further, that "at this time differentiated instruction is meeting his academic needs". The Mother's subsequent communication with Mr. A [REDACTED] clearly reflected her understanding that a 504 plan would be written within a month of the meeting. (Exhibit 42).
  
13. Following the March 2, 2016, meeting [REDACTED] K [REDACTED], a school social worker, started to observe the Student and to consult with Ms. H [REDACTED] the classroom teacher. Ms. K [REDACTED] began to work directly with the Student in small group sessions in April, 2016. (Exhibit 58, Testimony of K [REDACTED]). At this point in time the Student did not have a 504 plan. In April, 2016, Dr. Y [REDACTED], wrote to the school regarding her diagnosis of General Anxiety Disorder and the need for in-school interventions to assess the need for medication. (Exhibits 43, 51).
  
14. Ms. K [REDACTED]'s 504 plan assessment summary and entries of consultations with Ms. H [REDACTED] clearly confirmed the Student's inattention, fidgeting, impulsivity, lack of focus, anxiety and social and emotional difficulties. (Exhibit 59).

15. The Student's initial 504 plan was written at a meeting held on June 8, 2016, at the very end of the school year.
16. As of June 8, 2016, the District had not conducted a full and individualized evaluation of the Student. In addition, there is no documentation or testimony showing that the outside evaluations obtained by the Parents, Dr. H█████'s letters or Dr. Y█████'s letters had been considered by the ██████ School team on or before June 8, 2016.
17. Student entered the ██████ School for fifth grade in 2016-2017 after the Parents sought his transfer from ██████ School due to their dissatisfaction with the manner in which the Lincoln staff responded to their concerns. The transfer was accomplished with the assistance of Dr. G█████, who contacted District administrators ██████ K█████ and ██████ M█████ about the Parents' concerns. (Testimony of G█████).
18. The District's initial evaluation of the Student was conducted in the late fall of 2016 and was due at least in part to Mr. K█████'s intervention. The evaluation consisted of a school psychological evaluation, a school social work evaluation and a school nurse assessment.
19. The District has never conducted an evaluation of the Student in the areas of OT, speech/language or assistive technology.
20. Following the completion of the District's evaluation, on December 16, 2016, the District's team determined that the Student was not eligible for an IEP, but continued to be eligible for a 504 plan. The Parents and their outside consultants disagreed with the determination. (Exhibit 10).
21. The Student's 504 plan was revised on January 20, 2017, to add accommodations.
22. During 2016-2017, starting on September 23, 2016, the Student received direct school social work interventions from ██████ H█████ pursuant to his 504 plan, first individual sessions and then group sessions. (Testimony of H█████, Exhibit 11). The Student requires a continuation of direct school social work services, both individual and group.
23. The Student has not been identified by the District as a student with a disability under IDEA and has never been provided services under an IEP.

### C. Compensatory Services

24. The Student's expressive language disorder has not been identified or addressed by the District and this has resulted in the loss of educational benefit to the Student between May 12, 2015, through the close of the hearing for which he requires remediation.
25. None of the Student's disabilities were identified and addressed in any systemic manner by the [REDACTED] Elementary School staff for over a year after the Parents raised concerns about writing and homework, and despite the determined efforts by the Parents and their outside consultants to secure services and supports for the Student. This delay resulted in the loss of educational benefit to the Student which was manifested by an increase in his anxiety, school refusal and frustration with homework. (Testimony of Mother, H [REDACTED], G [REDACTED].)

### D. Choice of Schools

26. [REDACTED] Elementary School is the Parents' preferred school for the Student in 2017-2018. (Testimony of Mother).
27. [REDACTED] is an open enrollment school, meaning that students are admitted if they reside within the neighborhood boundaries drawn by the District. (Testimony of E [REDACTED]).
28. Parents do not reside within the neighborhood boundaries drawn for the [REDACTED] Elementary School, but they reside near the [REDACTED] boundary. (Exhibit 5).
29. Students who reside outside the neighborhood boundaries of [REDACTED] can apply for admission, and they are chosen from a waiting list through a lottery system if space becomes available in a particular grade. (Testimony of [REDACTED]).
30. Students with siblings at [REDACTED] are also a priority, if space is available in the student's grade.
31. Student has a younger sister attending [REDACTED], and the Parents have an application pending to transfer the Student to [REDACTED] under the sibling priority policy. (Testimony of Mother).
32. Best interest transfers are also allowed under the District's policies, but these transfers also require available space at the preferred open enrollment school in the appropriate grade.

33. [REDACTED] does not offer specialized services or a certain type of program that would uniquely address the needs of the Student. (Testimony of E [REDACTED]).

34. The relationship between the Parents and staff at [REDACTED] Elementary School is not at a level of hostility that would impact the provision of FAPE to the Student in the school and compel this hearing officer to order a change of schools. The teacher at [REDACTED] that the Parents seemed to have a somewhat contentious relationship with is no longer employed by the District. (Testimony of R [REDACTED]-E [REDACTED]).

#### **E. Reimbursement for Private Evaluations and Therapies**

35. With the exception of the [REDACTED] and Associates invoice for speech and language services on April 29, 2017 and May 9, 2017 showing a payment of \$302.92 on June 22, 2017, the invoices provided by the Parents as Exhibit 73 do not clearly set forth the nature of the services provided or the Parents' out-of-pocket costs, and there was no testimony offered to provide this information.

### **CONCLUSIONS OF LAW**

#### **Standard of Proof**

The standard of proof in impartial special education due process hearings under IDEA is preponderance of the evidence. 20 U.S.C. 1415(i)(2)(C)(iii). Under this standard, the party seeking relief must establish that the fact sought to be proved is more probable than not.

#### **Child Find and Evaluations**

The District is responsible for seeking out and identifying all children from birth through age twenty-one within the District who may be eligible for special education and related services under IDEA and the Illinois School Code. 23 Ill. Adm. Code 226.100(a). This is an affirmative obligation that applies regardless of whether a child's parents actively seek special education and related services for their child. *Robertson County Sch. Sys. v. King*, 24 IDELR 1036, (6<sup>th</sup> Cir. 1996, unpublished).

In the instant case, the District failed to meet its child find responsibilities despite repeated requests by the Parents. Beginning at the end of the third grade and continuing throughout fourth grade and into fifth grade, the Parents frequently raised concerns about the Student's writing skills, frustration with homework assignments and anxiety. The Parents also requested an evaluation several times in 2015-2016.

The Parents obtained an outside psychological evaluation of the Student in June, 2015, in which the Student was diagnosed with ADHD Combined Type. An outside OT evaluation obtained by the Parents in early September, 2015 found sensory regulation

issues and provided a list of recommended interventions in the school setting. The outside evaluations were shared with the appropriate [REDACTED] Elementary School personnel. In addition, the 2015-2016 classroom teacher observed the Student's inability to attend and focus, his fidgeting and other clear signs of ADHD and attempted to work with the Parents on an informal basis to implement some classroom strategies for the Student. Dr. H [REDACTED] and Dr. Y [REDACTED] each communicated with the school several times on behalf of the Student. In April, 2016, in her first letter to the school Dr. Y [REDACTED] notified the District of her diagnosis of General Anxiety Disorder.

Nevertheless, [REDACTED] Elementary School did not identify the Student as a child with a suspected disability under IDEA. On June 8, 2016, approximately one year after the Parents began to communicate their concerns, that a 504 plan was finally developed for the Student. Under the 504 plan the Student received school social work services and some classroom accommodations.

However, with the exception of [REDACTED] K [REDACTED]'s social work 504 plan assessment in March, 2016, no evaluation of the Student was conducted by the District during the time he attended [REDACTED] Elementary School.

It was not until November, 2016, that the District conducted an evaluation of the Student. The evaluation consisted of a school psychological evaluation, a social work evaluation and a school nurse assessment. It appears that the evaluation was conducted at this time because Dr. G [REDACTED] contacted Mr. K [REDACTED] to discuss the Student's circumstances and was able to secure a commitment from Mr. K [REDACTED] that the District would evaluate the Student. Based upon these evaluations the District's IEP team at [REDACTED] Elementary School determined that the Student was not eligible for and IEP.

Once a child is suspected of having a disability under IDEA it must conduct a full and individual initial evaluation before special education and related services can be initiated for the child. 34 C.F.R. §300.301(a).

The evaluation of the Student in fifth grade was not comprehensive based upon his individual circumstances and the information already available to the District. First, the District did not conduct an OT evaluation even though [REDACTED] S [REDACTED]'s OT evaluation in 2015 had identified sensory regulation issues for which she recommended specific interventions. The District should have either adopted Ms. S [REDACTED]'s findings or conducted its own OT evaluation.

Second, even though the Parents had consistently raised issues about the Student's writing, no language evaluation was conducted to determine whether he had a language disorder affecting his writing skills. The Parents obtained an outside language evaluation by [REDACTED] M [REDACTED] in April, 2017, and Mr. M [REDACTED] diagnosed the Student as having a language disorder. (Exhibit 2).

## **FAPE**

In *Endrew F. v. Douglas County School District RE-1* (No. 15-827, US SCt. 3/22/2017), the Court held that to provide a FAPE a school district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's

circumstances. The Student was denied FAPE due to the District's failure to find him eligible under IDEA despite the outside evaluations, the Parents' concerns and the Student's struggles with attention, organization and anxiety. The Student's 504 plan did not provide instructional supports or goals to appropriately address the Student's multiple disabilities.

In addition, a child is denied a FAPE due to a violation of a procedural requirement of IDEA if the procedural inadequacy impeded the child's right to a FAPE or caused a deprivation of educational benefits. 20 U.S.C. §1415(f)(3)(E)(ii). Several procedural violations occurred in regard to the Student, most notably when he attended the ██████████ Elementary School. These violations certainly delayed the provision of a FAPE and caused a deprivation of educational benefits.

- a. The Student should have been found eligible for special education and related services and provided an IEP. Under IDEA a "child with a disability" includes a child with a speech or language impairment, or other health impairment, who, by reason thereof, needs special education and related services. 20 U.S.C. §1401(3)(A)(i) and (ii). The Student has been diagnosed with ADHD and a language disorder. He also has been diagnosed with General Anxiety Disorder and sensory regulation issues that have an impact on his ADHD. All of these disabilities impact his ability to learn and progress in school academically, socially and emotionally, and need to be addressed in an IEP.

The Student's intellectual prowess does not preclude a determination that he has a disability that qualifies him for special education and related services. For example, a student with high cognition and ADHD can be considered to have an other health impairment. Letter to Anonymous, 55 IDELR 172 (1/13/2010). Likewise, a student with superior intellectual abilities can have a language disorder that qualifies the student for an IEP.

- b. The procedural violations worth noting occurred mainly in 2015-16 when the Student attended ██████████ Elementary School and the Parents were vigorously attempting to secure help. Dr. H██████'s letter of November 10, 2015, also signed by the Parents, seeking a full evaluation received no response from the school, even though the District was required to determine whether an evaluation was warranted within fourteen days after receiving the request and, if the District determined not to conduct an evaluation, it was required to provide written notice to the parents in accordance with 34 C.F.R. §300.503(b). 23 Ill. Adm. Code 226.110(c). The District's disregard of this procedural requirement contributed to the delays in evaluating the Student and denied him services that he could have received as early as the fourth grade.

Also of great concern is the manner in which the District failed to take into serious consideration the evaluation reports and data provided by the Parents at the beginning of the fourth grade. At that point in time the

District had no evaluation data of its own other than teacher observations and the Parents made several requests for the District to evaluate the Student. There is no documentation in the record that the District meaningfully reviewed and considered the June 2015 psychological evaluation or the September, 2015, OT evaluation as part of its determinations of whether to evaluate the Student. See, 34 C.F.R. §300.305. It appears that the District relied solely on the Student's grades and standardized test scores in denying Parents' requests for an evaluation and then subsequently when it determined that the Student was not eligible for an IEP. The private evaluation reports should have provided a basis for an evaluation by the District. Minimally the District should have explained to the Parents why the private evaluations were not considered valid or sufficient to justify a District evaluation.

### **COMPENSATORY SERVICES**

Hearing officers may award compensatory services to be provided prospectively to a child for past deficiencies. Bd. of Educ. Of Oak Park-River Forest High Sch. Dist. 200 v. Ill. State Bd. of Educ. 79 F. 3d 654 (7<sup>th</sup> Cir. 1996). While the Seventh Circuit has yet to prescribe how an award of compensatory services should be calculated, Illinois District Courts have used the approach applied in Reid ex rel Reid v. District of Columbia, 401 F.3d 516 (D.C. Cir. 2005). The court in Reid rejected the mechanical calculation quantitative approach and adopted a qualitative standard that compensatory services awards should "aim to place disabled children in the same position they would have occupied but for the violations of IDEA". Reid, 401 F.3d at 518. In Petrina W. v. City of Chicago Public School District No. 299, (08 CV 3183, N.D. Ill. 12/10/2009), the Court remanded the case to the hearing officer to determine the amount of compensatory services the child required, if any, to give her the benefits she would have likely accrued had she been provided FAPE. In Minor T.G v. Midland School District 7, 848 F.Supp. 2d 902 (C.D. Ill. 2012) the court upheld an award of compensatory education, finding that it was appropriate and reasonably calculated to provide the child the educational benefits she would have received had the school district provided appropriate services during her ninth grade year. Given the preference of Illinois District Courts to follow the Reid approach, it is appropriate to apply the qualitative standard in determining compensatory services in this case.

Having determined that the District denied a FAPE to the Student, the next question is whether the Student's educational progress was impeded as a result of the IDEA violations. The Student has never been provided an IEP, and his 504 plans have been insufficient to address all of his educational and related services needs. Neither his expressive language disorder nor his sensory regulation issues have been addressed, and without an IEP no specific measureable goals and benchmarks have been developed to address any of his disabilities. Since this is a Student who is easily frustrated with after-school assignments, it would be best not to overload him with additional services. (Testimony of G [REDACTED]). However, it is critical that compensatory services address writing skills and pragmatics as priorities.

### **CHOICE OF SCHOOLS**

Consistent with findings of fact 26-34, there are no grounds upon which to grant the relief sought by the Parents that the District be ordered to admit the Student to [REDACTED]

Elementary School in 2017-2018. This hearing officer lacks the authority (1) to order the District to admit the Student into a particular school and (2) to rule in regard to whether the District's has complied with its own school admissions and enrollment policies. The hearing officer's jurisdiction is limited to the identification, evaluation, or educational placement of the child or the provision of a FAPE. 20 U.S.C. §1415(b). The record fails to establish that admission to [REDACTED] has any connection with the provision of a FAPE.

### **REIMBURSEMENT OF PARENTS FOR OUTSIDE EVALUATIONS AND SERVICES**

The record does not support an Order directing the District to reimburse the Parents for the costs of outside services they obtained for the Student, except for Mr. M [REDACTED]'s speech and language services. The other invoices fail to adequately describe the nature of the services rendered and the Parents' out-of-pocket expenditures. There was no testimony offered to provide the detail necessary to justify a reimbursement Order.

### **ACCESS TO RECORDS**

An issue arose prior to the due process hearing concerning parental access to the Student's records. A Motion to Compel Production was filed by the Parents and granted. See, Order Regarding Access to Education Records issued August 12, 2017. The Order stated that the District was required to comply with the provisions of IDEA concerning parental access to records relating to the identification, evaluation and educational placement of the Student, or the provision of a FAPE to the Student. The District then released records to Parents' counsel. Another dispute then arose between the parties over certain records that had redactions. The hearing officer reviewed *in camera* 114 pages of documents with the redactions removed, and approximately five pages were ordered released to Parents' counsel. The Parents then filed a Motion for Sanctions on August 17, 2017. After a discussion on the hearing record concerning the resolution of the pending request for sanctions, Parents' counsel indicated that the Parents, in lieu of sanctions, would accept an entry by the hearing officer in the Final Determination and Order regarding the procedures that must be followed concerning access to records. The records issue is addressed below.

### **ORDER**

It is hereby ordered as follows:

1. The District shall convene an IEP meeting within 10 school days after the date of this Order to prepare an IEP for the Student, basing his eligibility on a primary disability of other health impairment (ADHD) and secondary disability of language disorder. The meeting participants shall include the Parents, the Student's classroom teacher, a special education teacher, a speech and language therapist, a school social worker and an occupational therapist. Dr. G [REDACTED], Dr. H [REDACTED] and Mr. M [REDACTED] shall be invited to participate in the meeting in person, if possible, or by telephone if necessary, and their schedules shall be accommodated. The Student's IEP shall:
  - (a) include goals and benchmarks to address his ADHD, organizational and planning skills, expressive language disorder affecting written

- expression, social communication/pragmatics, social and emotional needs, and sensory regulation using currently available baseline data which shall be updated by the District during the 2017-2018 school year through observation, data collection and/or additional assessments;
- (b) incorporate the recommendations in the reports and communications of private evaluators and service providers Dr. M. ██████████/Ms. P. ██████████, Dr. Y. ██████████, Ms. S. ██████████, Dr. G. ██████████ and Mr. M. ██████████ with respect to school-based instructional strategies, interventions, modifications and accommodations;
  - (c) take into consideration his intellectual prowess by challenging him in his areas of strength and allowing him to advance in his areas of strength at a pace compatible with his abilities and achievement;
  - (d) include direct group school social work services for a minimum of 30 minutes per week, and an additional 30 minutes per week of direct individual school social work services to address social and emotional needs such as low self-esteem and anxiety, and provide for periodic consultation between the school social worker and his private therapist, if he continues in private therapy;
  - (e) provide direct language therapy services and classroom consultation between the speech and language therapist and his teachers to address his expressive language disorder affecting writing skills, including conventions of print, with coordination between the school speech and language therapist and his private speech and language therapist;
  - (f) establish a process of communication between the Parents and the school to facilitate cooperation and information-sharing.
2. Within 30 calendar days from the date of this Order, the District shall obtain an independent individualized evaluation of the Student's assistive technology needs at the District's expense. The District shall provide transportation necessary for the Student to participate in the evaluation, or reimburse the Parents for their mileage in accordance with the District's travel reimbursement policy. If the evaluation cannot be completed within this timeline, the District shall at least arrange for the evaluation within the timeline and schedule it for the earliest practicable date. The District may retain a qualified free or low-cost publicly funded agency that specializes in assistive technology to conduct the evaluation. At a minimum the evaluation shall include an assessment of the Student's AT needs in the areas of written expression, ADHD, organization and planning and sensory regulation. The results of the AT evaluation shall be considered at a timely and properly convened meeting of the IEP team.
3. To remediate the Student's written language deficits, as compensatory services the District shall provide at its expense one 60-minute speech and language therapy session every two weeks by a licensed speech and language therapist in a private practice for one calendar year beginning no later than the fourth week of the District's 2017-2018 school year. The total number of sessions at the District's expense shall not exceed 26. The private speech and language therapist shall be chosen by the Parents and the sessions shall be scheduled by the Parents. The District shall reimburse the Parents for their mileage necessary to access the therapy sessions in accordance with the District's travel

reimbursement policy. The location of the therapy sessions shall be within a 25 mile radius of the Student's residence.

4. The Parents' request for an Order directing the District to place the Student in a particular school for the 2017-2018 school year is denied.
5. Within 30 calendar days of this Order the District shall reimburse the Parents for their costs of the speech and language evaluation by [REDACTED] M [REDACTED] in the amount of \$302.92.
6. As a procedural matter (*see* 20 U.S.C. §1415(f)(3)(E)(iii)), in accordance with the Order issued in this matter on August 12, 2017, and as a resolution to the Parents' request for sanctions, the District shall not require the Parents to file a request under the Illinois Freedom of Information Act to obtain student records that should be made available to the Parents under IDEA pursuant to 34 C.F.R. §§300.501 and 300.613.

The District shall provide written verification of compliance with this Order to the State Board of Education within 60 days of the date of this Order.

#### **NOTICE OF RIGHT TO REQUEST CLARIFICATION**

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

#### **NOTICE OF RIGHT TO APPEAL**

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

DATE: September 7, 2017

*/s/ Philip C. Milsk*  
Philip C. Milsk, Hearing Officer

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

**CERTIFICATE OF SERVICE BY E-MAIL**

I, Philip C. Milsk, Impartial Hearing Officer in the above-captioned matter, hereby certify that I served a true and correct copy of the foregoing Final Determination and Order upon the following individuals by e-mail on September 7, 2017:

[REDACTED]

[REDACTED]

Andy Eulass  
Illinois State Board of Education  
100 N. First Street  
Springfield, IL 62777-0001  
[aeulass@isbe.net](mailto:aeulass@isbe.net)

/s/ Philip C. Milsk  
Philip C. Milsk