

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

\_\_\_\_\_  
**Student,**

**v.**

**Case No. 2017-0282**

\_\_\_\_\_  
**School District.**

**Philip C. Misk,  
Impartial Hearing Officer**

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**FINAL DETERMINATION AND ORDER**

**I. PROCEDURAL HISTORY**

The hearing request in this matter was submitted to the Chicago Public School District 299 ("District") on February 21, 2017, by \_\_\_\_\_ on behalf of the Student, \_\_\_\_\_ ("Student"), and her Surrogate Parent, \_\_\_\_\_ ("Surrogate Parent"). The State Board of Education assigned the case to this hearing officer on February 27, 2017. On March 3, 2017, the District's counsel, \_\_\_\_\_ filed a letter of response. An initial status conference call was held with counsel on March 16, 2017.

On March 20, 2017, counsel executed a standard Resolution Meeting Status Report form agreeing to participate in State-sponsored Mediation. The parties jointly moved for a continuance of the Pre-hearing Conference in order to allow the parties time to participate in Mediation, and an Order was entered on March 20, 2017, granting the joint Motion. Mediation and subsequent informal settlement discussions were unsuccessful.

The Pre-hearing Conference was held on April 14, 2017, and completed that day. It was agreed between the parties and the hearing officer during the Pre-hearing Conference that the due process hearing would start on July 17, 2017, and five days were reserved for the hearing.

The due process hearing commenced on July 17, 2017, and concluded on July 31, 2017, with the submission by counsel of written arguments. The hearing was held at \_\_\_\_\_

**II. BACKGROUND**

Student is fourteen years old and will turn fifteen on \_\_\_\_\_. At the time of the hearing she was receiving extended school year ("ESY") services at \_\_\_\_\_ a therapeutic day school, and preparing for the transition from 8<sup>th</sup> grade to high school. Student is a ward of the Illinois Department of Children and Family Services ("DCFS") and is represented by her Surrogate Parent. Student is a survivor of abuse and neglect, including sexual abuse, perpetrated by members of her family. She is diagnosed with post-traumatic stress disorder, oppositional defiance disorder, reactive attachment disorder, and attention-deficit hyperactivity disorder ("ADHD"). Her eligibility for

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special education is based upon an emotional disability and other health impairment (ADHD). There is no disagreement about her disabilities.

Student currently resides at [REDACTED], a residential group home [REDACTED]. [REDACTED] serves children in foster care with behavioral needs. She has lived at [REDACTED] since 2015.

The violations raised by the Student and her Surrogate Parent allegedly took place during the 2015-2016 school year. In September, 2015 Student entered the [REDACTED]. Student was placed in general education classes and had a section 504 plan. However, her behaviors were of significant concern and, while they were mostly manageable in the group home setting, they were more problematic in the school environment. These behaviors included defiance toward adults, verbal outbursts, not doing her work and walking out. She also had a propensity for elopement and poor boundaries when interacting with male peers. For her protection a Safety Plan was developed by [REDACTED] staff and [REDACTED] (Exhibit 27).

The Student's inappropriate behaviors escalated during the fall of 2015. Eventually, in the late fall of 2015 the District evaluated the Student to determine her eligibility for special education. On December 2, 2015, she was found eligible and an IEP was written for her. The IEP (Exhibit 3) called for her continuation in general education classes with 20 minutes per week of direct school social work services. Her participation in general education was for 99% of the time (except for the 1% in social work sessions). (Exhibit 3, p. JE-28) In addition, the December 2, 2015, IEP required the provision of a dedicated paraprofessional for the Student. The paraprofessional was deemed necessary to allow the Student to access the general education curriculum, meet her needs with respect to staying on-task, and address behaviors, peer interactions, social communications, transitions to new learning environments and data collection. (Exhibit 3, p. JE 8-5).

After the December 2, 2015, IEP meeting the dedicated paraprofessional was not provided for the Student. One person was hired for three days in early February, 2016, but the Student was only present in school on one of those days and the individual did not continue as the paraprofessional for the Student. Various staff members such as the case manager/school counselor, security guard, and a special education teacher were assigned to carry out responsibilities similar to those of a dedicated paraprofessional. District witness [REDACTED] testified that the District was unable to hire someone for the paraprofessional position.

On May 10, 2016, an elopement incident occurred in which the Student left [REDACTED] without permission. She was escorted to the restroom, but was able to leave because the escort left her unsupervised. She was picked up by a family member. At that time family members were receiving supervised visitation with the Student. Student was gone for several days before she was found by police and returned to [REDACTED]. [REDACTED] staff decided at that point that the Student should not return to [REDACTED] and she did not attend [REDACTED] after May 10, 2016.

An IEP meeting was convened by the District on May 25, 2016, to discuss possible revisions to the Student's IEP. The May 25 meeting was not completed due to lack of sufficient time and resumed on June 8, 2016.

On June 6, 2016, [REDACTED] filed a State Complaint (see, 34 C.F.R. § 300.151-153) with the Illinois State Board of Education ("ISBE") alleging that the Student did not receive

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the services of a dedicated paraprofessional as required by her IEP of December 2, 2015, in violation of her rights.

The Student's IEP team reconvened on June 8, 2016. ██████ attended the meeting on behalf of the Surrogate Parent and the Student. The Surrogate Parent participated by telephone for a portion of the meeting. A draft version of the IEP (Exhibit 5) was provided to ██████ at the meeting and shared with the Surrogate Parent by e-mail. The final version of the new IEP (Exhibit 4) was entered into the CPS system later that day by ██████ an administrator with the District's Office ██████. The language describing the basis for the Student's need for ESY in 2016 in the final version of the IEP is different than the ESY wording in the draft version.

The final IEP of June 8, 2016, changed the Student's placement to a therapeutic day school with 100% of the Student's time in special education. It also increased her social services to 45 minutes per week.

The Student started at ██████ in early July, 2016. She received ESY services at ██████ during the summer of 2016.

On August 5, 2016, ISBE issued a determination regarding its investigation of the State Complaint filed by ██████. ISBE found violations as alleged by ██████; and directed the District to "convene an IEP meeting with required team members to consider the child's need for compensatory education services, taking into account the period of approximately 18 weeks from the December 2, 2015 IEP meeting through May 10, 2016 when the child did not receive paraprofessional services." (Exhibit 6).

The compensatory education IEP meeting ordered by ISBE was convened on September 26, 2016. (Exhibit 7). A determination was made that the Student was not eligible for compensatory services. The rationale for the decision was that six weeks of ESY services in 2016 was compensatory education based on the special factor of the lack of paraprofessional services from December 2, 2015 to May 10, 2016. The Surrogate Parent, ██████, her therapist from ██████, and her teacher did not agree with the determination. (Exhibit 7, p. JE 12-2). A more comprehensive statement of the District's position regarding compensatory services is found in a letter dated October 6, 2016, from ██████ to Mark Conyer at ISBE. (Exhibit 36).

The Student attended ██████ during the 2016-2017 school year. Her last IEP meeting was on December 9, 2016. Her social work minutes were increased to 60 minutes per week. She was not recommended for ESY at that time, but did receive ESY services at ██████ during the summer of 2017.

██████ is a restrictive setting with 100% of the time spent in special education. All students at ██████ have IEPs. The Student's class size has ranged from six to ten during the year, and most of her peers are males. The variance in class size is due to the fact that students are re-integrated into less restrictive settings during the school year as they are deemed ready. (Testimony of ██████)

The Student has been determined ready for re-integration into a general education environment. According to ██████ her former ██████ teacher, and ██████, the classroom teacher's assistant, she is doing very well academically and her behaviors have improved significantly at ██████. She enjoys certain activities that help her cope with stress and frustration, including drawing and nature walks. ██████ described

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her as a gifted artist with excellent reading and writing skills. However, [REDACTED] is much different than a general education high school setting which will probably be a much bigger challenge for the Student. (Testimony of [REDACTED]).

When the due process hearing concluded the parties, counsel and [REDACTED] staff were expecting the Student to move to a foster home located in a suburb of [REDACTED] not far from [REDACTED]. The move could occur before the 2017-2018 school year begins and would result in her enrollment in a new school district. The level of re-integration would be determined at an IEP meeting. There is a possibility she could remain at [REDACTED] for a while or be re-integrated on a part-time basis. (Testimony of [REDACTED], the Student's direct services school social worker at [REDACTED]. If she moves to a foster home in a new school district, that district will be responsible for writing an IEP and making a placement determination. [REDACTED] will provide some services to facilitate the Student's dual residential and educational transition for a limited amount of time. (Testimony of [REDACTED] the residential case manager at [REDACTED]).

### **III. JURISDICTION**

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

### **IV. ISSUES<sup>1</sup>**

#### **A. FAPE**

1. Whether the District denied a FAPE to the Student by failing to implement her IEP from December 2, 2015, through May 10, 2016 by (a) failing to provide a dedicated paraprofessional and (b) failing to provide the direct school social work services required by her IEP.
2. Whether the District denied a FAPE to the Student by failing to include in her IEP of December 2, 2015, appropriate direct school social work minutes per week to address her social, emotional and behavioral needs during the 2015-2016 school year.

#### **B. COMPENSATORY SERVICES**

1. If the Student was denied a FAPE by the District as described above, should the District be ordered to provide compensatory services to the Student?
2. If so, what type, amount and duration of compensatory services should the District be required to provide?

### **V. FINDINGS OF FACT**

1. The December 2, 2015, IEP for the Student required the District to provide a dedicated paraprofessional to support data collection, assist the Student to engage her peers, model appropriate responses, draw attention to missed social cues, promote and

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<sup>1</sup> The issues statements are somewhat narrower than those set forth in the Pre-hearing Report and Order to specifically align them with issues actually presented by the Surrogate Parent and Student at the hearing.

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guide the use of peer supports through appropriate cooperative learning and peer tutoring, help peers interpret Student's behavior and address it consistently, and help the Student transition to new learning environments. (Exhibit 3, p. JE 8-5).

2. The December 2, 2015, IEP also required that the Student receive twenty minutes per week of direct school social work services to address her social and emotional needs. (Exhibit 3, p. JE 8-28).
3. The District did not provide a dedicated paraprofessional for the Student from December 2, 2015, through May 10, 2016, while she attended [REDACTED] except for a three-day period, February 1-3, 2016, during which the Student was present at school one day. (Testimony of [REDACTED] a school counselor and the Student's case manager at [REDACTED]. According to a June 30, 2016 letter from [REDACTED] to Mark Conyer at ISBE concerning the State Complaint, this individual was not retained as the Student's paraprofessional because it was determined that she was not a good fit for the position. (Exhibit 34). The paraprofessional was not provided because the District was unable to hire someone. (Testimony of [REDACTED]).
4. Various school staff were assigned to provide paraprofessional services for the Student. (Testimony of [REDACTED]. In her June 30, 2016 letter to Mr. Conyer [REDACTED]. [REDACTED] administrator for the District's [REDACTED] [REDACTED] stated that "the school district did in fact cover the supports a paraprofessional would have provided by assigning other trained school staff to implement the paraprofessional support identified in her IEP". The letter named [REDACTED] a special education teacher, [REDACTED], a security guard, and [REDACTED] the Student's case manager, as the staff members assigned to provide paraprofessional support at various times in certain school environments. (Exhibit 34).
5. All of these individuals had other responsibilities at [REDACTED]. (Testimony of [REDACTED]. Therefore, they were not *dedicated* to addressing the needs of the Student. There is no evidence in the hearing record showing that they were specifically trained to work with the Student to provide the paraprofessional services to meet her unique needs as described in the IEP of December 2, 2015.
6. Student needed a dedicated paraprofessional at [REDACTED] with whom she could develop a safe and connected relationship in a nurturing way due to her disabilities, including her post-traumatic stress disorder caused by her history of abuse and neglect by family members. (Testimony of [REDACTED]). Consistency and trust are important for the Student. (Testimony of [REDACTED]).
7. The failure to provide a dedicated paraprofessional at [REDACTED] had adverse consequences for the Student. The behaviors targeted in her IEP, behavioral intervention plan (BIP) and Safety Plan (Exhibit 27) continued and worsened. (Testimony of [REDACTED]). In addition, inappropriate behavioral interventions were used for the Student.

A Google Document created by [REDACTED] staff and used by [REDACTED] staff to report incidents (Exhibit 13) shows inappropriate targeted behaviors recorded frequently in January, February and early March, 2016 including outbursts in class, leaving class without permission, off-task behaviors, meeting and touching a boy with whom she was fixated ("student J"), throwing objects, writing love

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notes to student "J", and using inappropriate language. A sexually suggestive note written by the Student to "J" was found by staff in April, 2016 and sent via e-mail by [REDACTED] and two other individuals at [REDACTED] (Exhibit 14).

On January 8, 2016, [REDACTED] sent an e-mail of concern to staff at [REDACTED] and [REDACTED] that the Safety Plan was not being implemented and her behaviors at school were escalating. [REDACTED] message mentioned specifically the Student's interest in "student J". The Assistant Principal, [REDACTED] responded that she would schedule a meeting. (Exhibit 15).

The Student was given several in-school detentions by Ms. Pusateri (for example, see Exhibit 22 regarding an after-school detention on February 23, 2016), and [REDACTED] testified that she personally observed [REDACTED] using threats to address the Student's behavior, contrary to the Student's BIP.

8. The District did not convene an IEP meeting between December 2, 2015, and May 25, 2016. The May 25, 2016, IEP meeting was convened because the Student had left school without permission on May 10, 2016, and was held out of school by Lydia Home.
9. The elopement incident that occurred on May 10, 2016, endangered the Student, caused her additional trauma (Testimony of [REDACTED]) and convinced the [REDACTED] staff that the Student's attendance at [REDACTED] should be discontinued because they believed that [REDACTED] could not provide the Student with appropriate supervision and were concerned about her safety. (Testimony of [REDACTED]).
10. The Student was able to leave school on May 10, 2016, without permission when she was escorted to the restroom and left unsupervised. The paramour of the Student's uncle picked her up outside [REDACTED]. (Testimony of [REDACTED]). The meeting was arranged through messages sent to "Student J's" Facebook page. The Student was found three days later and returned to [REDACTED]. The Student had been with family members who at that time were only allowed supervised visitation with the Student. (Testimony of [REDACTED]).
11. The IEP meeting convened on May 25, 2016, concluded on June 8, 2016. A placement change to a therapeutic day school was recommended, and the Student's enrollment in [REDACTED] was arranged by the District. The revised IEP increased the Student's school social work minutes from 20 to 45 per week and recommended ESY services.
12. The ESY services for 2016 at [REDACTED] are a key issue in dispute. The District claims, and the final version of the June 8, 2016, IEP states, the rationale for ESY to be that the Student "is at a critical stage in development where window of opportunity will be lost without ESY. Explanation: Due to the lack of paraprofessional supports and (Student's) recent elopement and her escalating behavioral issues. ESY is offered as a resolution to address the interruption of paraprofessional services. (Student) requires direct specialized instructions and social-emotional support by a certified staff who can address her social, behavioral and mental health conditions." Six weeks of ESY were recommended. (Exhibit 4 p. JE 9-28). This "final" IEP was entered into the District's event log

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by [REDACTED] at 2:33 p.m. on June 8, 2016. (Exhibit 40, testimony of [REDACTED])

13. A "draft" version of the June 8, 2016, was shared with the Surrogate Parent and [REDACTED] at the meeting. The Surrogate Parent testified that he attended the May 25, 2016, IEP meeting and that compensatory services were not discussed at that time. The meeting was resumed on June 8, 2017. The June 6, 2016, State Complaint was filed by [REDACTED] at his request. He testified further that the "draft" IEP was e-mailed to him by [REDACTED] during the June 8, 2016 meeting and that he discussed it with her and agreed with it. He testified further that compensatory services were discussed at the meeting on June 8, 2016. The Surrogate Parent's testimony is credible with respect to these matters. (Exhibit 38, e-mail message from the Surrogate Parent to [REDACTED] sent at 1:56 p.m. approving the proposed "draft" IEP).
14. With respect to ESY services, the "draft" IEP of June 8, 2016, differs from the "final" version because it states as an explanation for ESY: *"(Student) is at a critical stage in development where window of opportunity will be lost without ESY. Explanation: Outside diagnoses have determined that (Student) is significantly impaired in her executive functioning skills, which includes being able to attend, concentrate and focus. She has difficulty following multiple step problems and with working memory, which may be related to her frequent/daily obsessive thoughts and behaviors."* (Exhibit 5, p. P000181). The draft IEP recommended four weeks of ESY, not six weeks, and did not refer to ESY as being compensatory services.
15. The Surrogate Parent and [REDACTED] agreed to the "draft" version of the IEP dated June 8, 2016, not to the "final" version of the IEP that was edited and logged into the system at 2:33 p.m. on June 8, 2016 by [REDACTED] and sent by her to [REDACTED] by e-mail at 2:42 p.m. (Exhibit 38). In addition, they did not agree that ESY was compensatory services for the lack of a dedicated paraprofessional at [REDACTED] from December 2, 2015 to May 10, 2016. (Testimony of Surrogate Parent). (See also, Exhibit 35, a July 14, 2016, letter from [REDACTED] [REDACTED] categorically denying that she agreed to the ESY language in the "final" version of the June 8, 2016, IEP as a resolution of the State Complaint, and further stating that she had no permission from the Surrogate Parent to approve such a resolution of the State Complaint.)
16. According to the IEP of December 2, 2015, the Student was to receive 20 minutes per week of direct school social work services. A review of related service logs entered into the hearing record as Exhibit 28 shows that there were a total of five direct individual social work sessions with the Student between December 9, 2015, and May 10, 2016, the day she left [REDACTED]. A sixth session for sixty minutes was held on March 16, 2016, with a peer. Counting the total minutes of these sessions, including the session with a peer, the Student was provided 225 minutes of social work services for the eighteen weeks of school when she should have received 360 minutes of social work services. Some of the social work sessions were combined, and there were a number of weeks in which the Student did not receive direct social work services in 2015-2016. (Exhibit 28 and testimony of [REDACTED] the Student's school social worker starting on February 17, 2016.) [REDACTED] was not available to the Student at all times because she was also assigned to other schools. (Testimony of [REDACTED])

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17. Twenty minutes of direct school social work services per week to address the Student's significant behavioral and social and emotional deficits fell far short of meeting her needs. (Testimony of [REDACTED]). The increase of her social work minutes to 45 minutes per week in the June 8, 2016 IEP and to 60 minutes per week in the December 9, 2016, IEP, (Exhibit 29, p. JE 14-40) in a much more restrictive setting than [REDACTED] demonstrate further the inappropriateness of the social work minutes in her December 2, 2015, IEP.
18. Transitioning to a foster home and to a new high school will present substantial challenges for the Student. (Testimony of [REDACTED]). She will need a significant level of supports both in the school setting and outside of school. In addition to the transitional supports offered by [REDACTED] and [REDACTED] (testimony of [REDACTED] and [REDACTED]), she needs direct school social work services and, in addition, outside therapy from a qualified mental health professional. (Testimony of [REDACTED] and [REDACTED]). The social work services the Student is provided in a new general education high school setting should at least equal what she has been receiving at [REDACTED] until it is determined that she no longer needs that level of support. The Student's need for consistency, stability and for a trusting relationship with adults must be taken into consideration at all times. (Testimony of [REDACTED])

## VI. CONCLUSIONS OF LAW

### A. FAPE

#### 1. Failure to Implement IEP- Dedicated Paraprofessional

A school district is required to provide special education and related services to a child with a disability in accordance with the child's IEP. 34 C.F.R. §300.323(c); 23 Ill. Adm. Code §226.200. A district does not deny FAPE to a child unless it fails to implement substantial or significant requirements of the IEP. *Houston Independent School Dist. v. Bobby R.*, 200 F.3d 341(5<sup>th</sup> Cir. 2000). Perfect adherence to an IEP or minor failures should not automatically be treated as IDEA violations. *Van Duyn v. Baker School District 5J*, 502 F.3d 811 (9<sup>th</sup> Cir. 2007), In *Van Duyn* the court held that in order to violate IDEA it must be shown that a district "materially failed" to implement the IEP. 502 F.3d at 815. A material failure occurs when there is more than a minor discrepancy between the services provided to the child and those required by the IEP. 502 F.3d at 822.

In the instant case the Student was denied the services of a dedicated paraprofessional required by her IEP of December 2, 2015. The specific responsibilities of the paraprofessional were extensive and written into the IEP. The utilization of several staff members to fulfill the services of the paraprofessional was inappropriate and insufficient. All of the staff members had other responsibilities at [REDACTED]. The Student needed a *dedicated* individual trained to understand the Student and her unique needs who could develop a nurturing and trusting relationship with her. The paraprofessional was an essential element of the Student's IEP that was necessary for the Student to receive FAPE while she was at [REDACTED] (Testimony of [REDACTED])

The District presented evidence that it was unable to hire a paraprofessional. However, the District did not convene an IEP meeting between December 2,

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2015, and May 25, 2016, to consider other alternatives or to offer different strategies to address the Student's needs and protect her safety in lieu of hiring a dedicated paraprofessional. Lack of resources in terms of staffing, facilities or finances is never a reason for failing to provide services under IDEA. Districts have the option to consider other alternatives including relocation of the Student, if necessary. *Letter to Angelo*, 213 LRP 9074(OSEP 9/13/88).

The failure to provide a dedicated paraprofessional for the Student was a significant cause of the escalation of her inappropriate behaviors during 2015-2016, culminating in the elopement incident on May 10, 2016 and her removal from [REDACTED] by the staff at [REDACTED].

The Student lost educational benefit because her behaviors worsened, she missed school after May 10, 2016, due to concerns about her safety at [REDACTED], and her educational placement was subsequently changed to [REDACTED] a therapeutic day school where she was not educated with non-disabled peers. She went from 99% general education to 100% special education because she was not provided essential services in accordance with her IEP. Consequently, the failure to provide the dedicated paraprofessional denied FAPE to the Student.

## 2. School Social Work Services

The Surrogate Parent argues that the District also failed to provide all of the direct school social work service minutes to the Student required by the December 2, 2015, IEP. A review of Exhibit 28 indicates that the Surrogate Parent is correct. According to the service logs 225 minutes were provided, including one 60 minute session that included a peer, compared to 360 minutes that should have been provided over the 18 week period between December 2, 2015, and May 10, 2016.

However, instead of considering this as a failure-to-implement issue, it makes more sense to review it in the context of whether the school social work services in the IEP were appropriate.

The Student's IEP required 20 minutes of direct social work services per week. The logs indicate that there were a number of weeks in which she did not receive any direct social work services. As witness [REDACTED], her school social worker starting on February 17, 2016, testified, some of the sessions were combined so that minutes were increased, but less frequent than required. Given the Student's severe behavioral and social and emotional needs and her need for consistency and stability, it would seem that more frequent encounters with the social worker would have been more appropriate to meet her needs. It should be noted that her social worker changed in February to [REDACTED] [REDACTED] (see her testimony and Exhibit 28), and [REDACTED] was assigned to more than one school so she was not consistently available to the Student. (Testimony of [REDACTED]).

Even if 20 minutes per week had actually been provided, the issue raised by the Surrogate Parent is whether it this provided FAPE to the Student. Considering the Student's history of abuse, including sexual abuse, and neglect, her diagnosis of post-traumatic stress disorder, oppositional defiance disorder, ADHD and reactive attachment disorder, her significant behavioral and social and emotional needs, and concerns about her safety due to her propensity for inappropriate interactions with boys and elopement, the 20 minutes per week were not appropriate. This conclusion is supported by the fact that her IEP team increased her school social work minutes at [REDACTED] to 45 minutes on June 8, 2016, and then to 60 minutes on December 9, 2016.

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In *Andrew F. v. Douglas County School District RE-1* (No. 15-827, U.S. Supreme Court 2017), the Court held that, in order for a school district to meet its obligation under IDEA, it must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. This FAPE standard was not met in the instant case with respect to the amount of school social work services offered in the December 2, 2015 IEP and the even lower amount of services actually provided up to May 10, 2016, when she left school and did not return to [REDACTED]. The Student was not provided FAPE.

## B. COMPENSATORY SERVICES

### 1. The Legal Standard

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.

### 2. Should the Student be Awarded Compensatory Services?

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. Primary targets of her IEP in 2015-2016 were her significant social and emotional needs and inappropriate behaviors. Testimony of Ms. [REDACTED] and others clearly establishes that her targeted behaviors worsened at [REDACTED]. It is reasonable to conclude that the lack of a dedicated paraprofessional, the inadequacy of the weekly social work service minutes in her IEP and the failure of the District to even provide the social work services she was supposed to have received, contributed to the Student's lack of progress. The elopement incident of May 10, 2016, missing the rest of the school year due to concerns about her safety at [REDACTED] and placement in special education 100% of the time at the [REDACTED] therapeutic day school starting in July, 2016, are indicators of her lack of educational progress at [REDACTED]. The Student should be awarded compensatory services.

### 3. Factors to be Considered in Awarding Compensatory Services

The District's argument that it has already provided compensatory services to the Student must be addressed. The District maintains that the ESY services at [REDACTED] in 2016 and the placement at [REDACTED] itself were in compensation for the lack of a dedicated paraprofessional at [REDACTED]. However, the Surrogate Parent's position is supported by a

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preponderance of the evidence. First, the “final” version of the June 8, 2016, was not the IEP agreed to by the Surrogate Parent and his counsel [REDACTED]. They had agreed to the “draft” version of the IEP provided to them on June 8, 2016, before the “final” IEP was logged into the system by [REDACTED]. The “draft” document clearly states that the 2016 ESY services were based on the Student’s educational needs and makes no mention of compensatory services, whereas the edited “final” version states that the ESY services were compensatory. The timing of the events of that day and [REDACTED] subsequent letter to [REDACTED] at ISBE unequivocally rejecting the notion that she had agreed with the “final” IEP on behalf of the Surrogate Parent, establish the lack of consent. Further, there is no evidence that the Surrogate Parent ever directly consented to the ESY explanation in the “final” IEP and he categorically denied such consent in his testimony. Moreover, neither [REDACTED] nor the Surrogate Parent withdrew the State Complaint they had filed with ISBE. It is also evident from the testimony and the IEP of June 8, 2016 that the decision to place the Student at [REDACTED] was made to address her educational and related services needs and not to compensate her for violations of IDEA.

Another important factor to be taken into consideration in awarding compensatory education are the Student’s residential and educational placements in the 2017-2018 school year. As has been noted, when the hearing concluded the Student was expected to be moving from [REDACTED] to a foster family home in a suburb of Chicago not far from [REDACTED]. This move would require her enrollment in a different school district and the new district would then become responsible for her IEP and an educational placement determination. According the testimony of her [REDACTED] social worker, [REDACTED], and other witnesses, the Student could be remain at [REDACTED] or be placed on a full or part-time basis in a high school within the new school district.

#### 4. Student’s Compensatory Services Needs

The Student should receive as compensatory services the supports necessary to enable her to successfully re-integrate into the general education environment in a new school on either a full or part-time basis by addressing her behavioral and social and emotional needs, including the ability to develop appropriate interactions and relationships with her peers, especially female peers. (Testimony of [REDACTED]).

The Surrogate Parent has requested, and [REDACTED] has recommended (a) a functional behavioral analysis (FBA) by an independent qualified behavioral specialist, (b) funding from the District to enable her to participate in extra-curricular activities with non-disabled peers, especially female peers, and (c) general supports as she transitions to the general education environment.

If and while the Student is at [REDACTED] full-time in 2017-2018, she does not require a new FBA. Testimony of [REDACTED] clearly indicate that her behaviors have improved at [REDACTED] to the point where the FBA is not needed. However, an FBA will probably be needed in a general education environment whether the Student is placed there on a full or part-time basis. Since the likelihood is that she will be in a new school district in 2017-2018, the new district staff should be given the opportunity to conduct the FBA so they can get to know the Student and her behavioral needs. Therefore, an independent FBA is not warranted at this time.

With respect to the request for funding for extracurricular activities, the Student has a number of strengths and favorite activities. She is a talented artist, reader and writer and enjoys nature walks. (Testimony of [REDACTED]). Since the IDEA violations cited herein had an adverse impact on her opportunities to engage in positive interactions and activities with non-disabled peers, the District should provide

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compensatory resources to enable her to participate in such activities in 2017-2018. This will be addressed in the order below.

Finally, as was discussed in the findings, the Student's successful transition to a new foster home and a new general education high school setting will be a significant challenge for her. The denial of FAPE during the 2015-2016 school year and subsequent placement in a therapeutic day school makes this challenge even more daunting for the her and, accordingly, she should receive compensatory services and supports that promote this transitional process. The Student requires services from a professional with whom she already has or can develop a nurturing and trusting relationship. Given her need for consistency, stability and trust, it is preferable that these services be provided by a professional with whom she is already familiar and has developed a relationship with. Therefore, the order will address the provision of outside mental health therapy and supports to the Student by the District from the start of the 2017-2018 school year.

## **VII. ORDER**

1. It is hereby ordered that the District provide the following compensatory services to the Student:
  - A. Pay for the services of a private qualified mental health professional for the 2017-2018 school year in the amount of (1) one sixty-minute direct therapy session with the Student per week, including weeks during the school year when the Student's school district is not in session, (2) sixty minutes per month of consultation with her school social worker, teachers and other appropriate school staff to be arranged between the mental health professional and school personnel, and (3) provide transportation for the Student to and from the private mental health therapy sessions or reimburse the Student's caretakers for their mileage costs in accordance with the District's mileage reimbursement policy. The private therapy services shall be arranged in cooperation with the Student's caretakers.
  - B. The services shall begin the first week of the academic year of her school district and end after the last week of the 2017-2018 academic year for the school district.
  - C. If practicable, the private qualified mental health professional shall be an individual with whom the Student has an established current or prior therapist-patient relationship. If this is impracticable, the District shall ensure that a private qualified mental health professional who is new to the Student is provided information about the Student's disabilities, family background and educational history. The requirements of applicable confidentiality laws shall be followed.
  - D. The payment rate for the private qualified mental health professional shall be the customary hourly rate for such services unless a different rate is agreed to by the District and the qualified mental health professional. The District shall inform the qualified mental health professional regarding the proper billing procedures to be followed to obtain payment for services provided to the Student.

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- E. The District shall also provide funding not to exceed \$1,000 to the Student's caretakers to pay for the Student's participation in one organized extracurricular program or activity during the 2017-2018 academic year. The program or activity shall be chosen by the Student in collaboration with her caretakers. It may be a school-sponsored or community-based program or activity and must be an integrated program or activity in which non-disabled peers, especially female peers, are participants. The funds may be used for registration or enrollment fees, supplies, uniforms, travel or other required costs of participation. Prior to issuing payments for this program or activity the District must receive an itemized invoice for the cost item or items required by the program.
2. The District shall verify compliance with the foregoing compensatory services requirements by:
- (a) Providing the State Board of Education with written confirmation that a private qualified mental health professional has been retained for the Student in accordance with this Order no later than ten school days after the beginning of the school year;
  - (b) If it is impracticable for the District to retain the services of a private qualified mental health professional with whom the Student has a current or prior therapist-patient relationship, providing documentation demonstrating why it was impracticable and its efforts to secure the services of a qualified mental health professional who is familiar to the Student prior to retaining a professional who is new to the Student;
  - (c) Verifying payments made to the private qualified mental health professional during the 2017-2018 academic year;
  - (d) Verifying payments for the required costs of the integrated extracurricular activity chosen by the Student.

#### **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.

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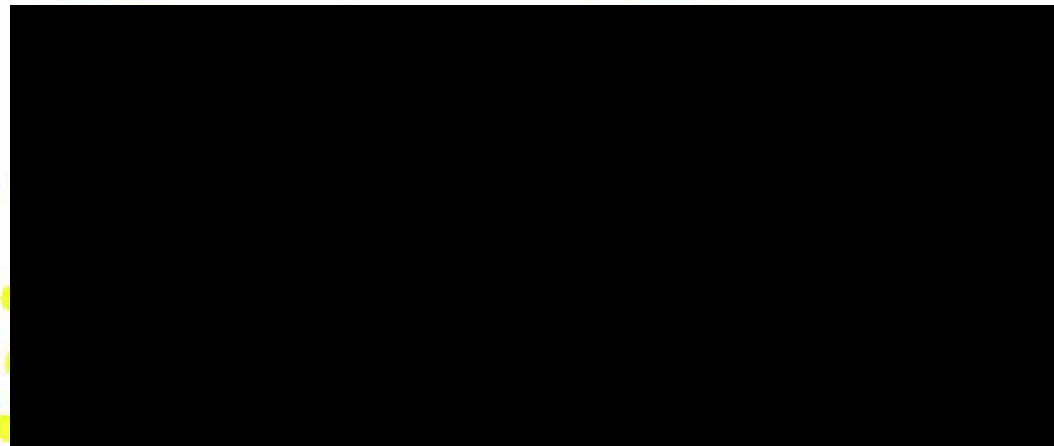
DATE: August 10, 2017

Philip C. Milsk  
Philip C. Milsk, Hearing Officer



**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 counsel of record by e-mail on August 10, 2017:



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

Philip C. Milsk

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