

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

██████████,

Student,

Case No: 2017-0498

v.

Janet Maxwell-Wickett, Impartial Hearing

Officer

City of Chicago SD 299,

School District.

FINAL DETERMINATION AND ORDER

JURISDICTION

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

BACKGROUND

The Student is a 9-year-old male who is a fourth grade student in a District elementary school. The Student has medical diagnoses of Autism Spectrum Disorder (ASD) and Attention Deficit Hyperactivity Disorder (ADHD). The Student had received special education services under the classification of Developmental Delay from age two (2) years through the end of his second grade year in May 2016. At that time it was determined that his needs would be best supported via a Section 504 Plan¹. Subsequently, an eligibility meeting was held at Parent's request on March 3, 2017, at

¹ Section 504 of the Rehabilitation Act of 1973.

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which time the Student was found ineligible for special education services. Parent disagreed with the District's March 3, 2017 eligibility determination.

The Parent filed a due process hearing request on June 20, 2017. (IHO #1.) The District filed its response on June 30, 2017. (IHO #3.) The parties participated in mediation on August 14th, 2017. However, they were unable to resolve the outstanding issues.

The Parties jointly requested continuances of the 45-day deadline on August 18, 2017 and September 18, 2017. (IHO #10, 20.) The August 18, 2017 continuance was requested in order to accommodate the requested prehearing conference and due process hearing dates. The September 18, 2017 continuance was requested due to the unavailability of Parent's expert witness for the original October due process hearing date. The Due Process Hearing dates were set by agreement for September 19th and October 4th, 2017 and the decision due date was reset to October 14, 2017. Due to the lack of availability of Parent's expert witness, the October 14th hearing date was stricken and replaced with the October 27th hearing date and the 45-day deadline was reset to November 6, 2017. The requested continuances were granted for good cause shown pursuant to this Hearing Officer's orders dated August 22, 2017 and October 5, 2017. (IHO #10, 20.)

The Parent opted for an closed hearing. The Due Process Hearing was held as scheduled on September 19, 2017 and October 27, 2017. Ms. Lucille Blackburn and Ms. Elizabeth Wagman of Chicago Public Schools represented the District. Mr. Brent Ray, Mr. Greg Polins, and Ms. Tera Stone of Kirkland & Ellis LLP represented the Parent. The District presented the following Exhibits: District Exhibits (SD) #1-7, 18, 25-31, 35, 37, which were admitted into evidence. The Parent presented the following Exhibits:

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Parent Exhibits (PE) #1-3, 5-12, 14, 17, 19-22, 25-26, 28, 30-31, which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-31. Both parties submitted written closing statements and copies of the case law each relied upon.

ISSUES

The issue raised by the Parent is as follows:

(a) Whether the Student was denied FAPE when the District found him ineligible for an individualized education plan ("IEP") and related services under the IDEA from March 3, 2017 to the present pursuant to 34 C.F.R. §300.8(a).

Parent maintains that the Student requires an IEP and related services in order to receive FAPE based upon the Student's diagnoses of Autism Spectrum Disorder (ASD) and Attention Deficit Hyperactivity Disorder (ADHD) and the impact of said diagnoses on the Student's deficits and needs in the educational setting. The District maintains that it has met its Child Find obligation and that the Student does not qualify for an IEP and services pursuant to the IDEA.

Parent requests that this Hearing Officer order the following relief:

- (a) Find the Student eligible for special education services, an IEP, and related services pursuant to the IDEA;
- (b) Order the District to convene an IEP meeting to develop an IEP which meets the Student's unique educational needs including the following:
 - i. Academic instruction;
 - ii. Independent work and problem solving instruction;
 - iii. Interpersonal relationship development, social skills, and communication instruction.
- (c) Order the District to establish appropriate benchmarks, quarterly goals, and annual goals as part of the IEP;
- (d) Order the District to provide compensatory education from March 3, 2017 to the present to compensate the Student for the time period in which he was denied FAPE.²

FINDINGS OF FACT

This Hearing Officer did have a transcript of the September 19, 2017 hearing testimony but did not have a transcript of the October 27, 2017 hearing testimony when writing this decision. Therefore, the following is based upon the September 19th

² In response to this Hearing Officer's request to propose a compensatory education package, Parent provided same via letter from counsel dated September 12, 2017. (IHO Exhibit #15.)

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

1. The Student is a 9-year old male who is in fourth grade at a District elementary school. He currently has a Section 504 Plan. (Testimony of Parent, SW, PSY, GE2; PE #11.)
2. The Student received special education services and supports from age two years through the end of his first grade school year, May 2015. (Testimony of Parent, SW; PE #21.)
3. The Student does not like school, feels that he does not have any friends at school. When he comes home from school, he cannot tell Parent about his day and does not talk about his classmates. He does not have play dates with peers and has a difficult time making friends. (Testimony of Parent; GE2.)
4. The Student has a particularly difficult time in music class and will not participate to the same extent as his peers. (Testimony of Parent, GE2, SW, PSY; SD #37.)
5. During the Student's second grade year, he struggled in the classroom. During classroom instruction, the Student was very fidgety; had difficulty keeping his hands to himself; had difficulty staying focused for any length of time; struggled to communicate his feelings to his peers and to solve problems appropriately; had difficulty forming and maintaining friendships; was difficult to motivate; was easily

frustrated which would quickly escalate to anger and could not regroup within the same amount of time as his peers. (Testimony of Parent, GE1³; PE #17.)

6. Parent, GE1, the assistant teacher, and one additional teacher completed the rating scales for the Connors-3. A clinical classification of ADHD was strongly indicated for all four raters. All four raters also agreed that the Student's problems seriously affected his functioning in the academic setting. Parent and GE1's ratings indicated that the Student's problems seriously affected his functioning in the social setting often to very frequently. (Testimony of Parent, Tr. 23-24; GE1;PE #7.)
7. The Student made very little academic progress during second grade. At the end of second grade, he was reading at a first grade level. (Testimony of GE1, Tr. 285-286; PE # 22.) The Student's math skills were one-half to one year behind those of his peers at the end of second grade. (Testimony of GE1, Tr. 300-301; PE# 22.)
8. At the conclusion of the Student's second grade school year 2015-2016, Parent independently sought additional evaluations of the Student and he was evaluated at ██████████ Hospital, Department of Child & Adolescent Psychiatry. The Student was medically diagnosed with ADHD, predominantly inattentive, and Autism Spectrum Disorder (ASD). (Testimony of Parent, Tr. 24; PE #1.)
9. Parent requested an evaluation of the Student for special education services on November 7, 2016. (Testimony of Parent; PE #8.)
10. Parent provided consent to the District to evaluate the Student on December 6, 2016. (Testimony of Parent; PE #9.)
11. The Student was evaluated in the areas of health, social emotional status, general intelligence, academic performance, and communication status. (PE# 9.)

³ GE1 holds a Master's Degree in Early Childhood Education. She is certified in the State of Illinois for early childhood education and holds an English Language Learners (ELL) endorsement. (Testimony of GE1, Tr. 268-269.)

12. Parent procured an independent neuropsychological evaluation of the Student by Dr. K in January 2017 which was provided to the school team for purposes of the eligibility determination⁴. (Testimony of Parent, Dr. K.; PE #2, 3.)
13. On March 3, 2017, an Eligibility Determination Meeting was held. At which time, the school team determined that “no disability was identified” and the Student was not eligible for special education services. (Testimony of PSY, SW; PE #10.)
14. The eligibility determination documentation reflects the Student’s diagnoses of ASD and ADHD. It further reflects concerns that the Student has “social, emotional, and behavioral concerns that significantly impact his educational success.” The documentation does not reflect the basis for the team’s determination that the Student was not found eligible for services. (PE # 10.)
15. Immediately after the Student was denied eligibility for special education services, his 504 Plan was amended to increase his social work service minutes from 30 minutes per month to 45 minutes per week. (Testimony of SW; PE #11.)
16. After the eligibility determination, PSY began providing the Student with 30 minutes per month of direct services to work on executive functioning strategies and skills to assist the Student to remain on task and engaged in the classroom. These changes were made to the Student’s 504 Plan. (Testimony of PSY; PE#11, 19.)
17. In March 2017, the District conducted a Functional Behavior Assessment (FBA) and, from the information obtained, created a Behavior Intervention Plan (BIP). The FBA/BIP Meeting was held on March 9, 2017. There is no dispute between the parties regarding FBA and BIP. (PE #12.)

⁴ When this Hearing Officer refers to the school eligibility team, Parent is included as a member of this team pursuant to 34 C.F.R. §300.305(a)(1)(i).

18. The FBA/BIP meeting documentation reflects that the Student's behavior impedes his learning or that of others. (PE #12.)

Neuropsychological Evaluation

19. Dr. K⁵ performed a neuropsychological evaluation in January 2017. Dr. K is a licensed clinical neuropsychologist. She holds an undergraduate degree in psychology and completed her neuropsychology training at the University of Chicago. She specializes in pediatric diagnostics. Dr. K's qualifications are uncontroverted by the District. (Testimony of Dr. K.)

20. The Student had been previously diagnosed with ADHD and ASD by a psychiatrist at ██████████ Hospital. ██████████ Hospital is a reputable institution for pediatric diagnostics and Dr. K agreed with the diagnoses. (Testimony of Dr. K; PE#2.)

21. The following methods of assessment were used with the Student: clinical interviews of Mother and Student; school records review; review of the Student's current 504 Plan; Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V); Autism Diagnostic Observation Scale-2 (ADOS-2); Autism Spectrum Rating Scale (ASRS) Parent and teacher report; Behavior Assessment for Children-3 (BASC-3); Conners Continuous Performance Test – Third Edition (CPT-3); Test of Everyday Attention for Children (TEA-Ch); Test of Visual Perception Skills – Third Edition (TVPS-3); Woodcock-Johnson Achievement Test-Fourth Edition (WJ-IV). (Testimony of Dr. K; PE #2.)

⁵ No evidence was introduced at hearing regarding the cost of Dr. K's evaluation to Parent.

22. The appropriateness of Dr. K's assessment tools was uncontroverted by the District at hearing.
23. The ADOS-2 is gold standard assessment in the diagnosis and evaluation of autism. It is a research based, standardized measure of autism that is valid and reliable (Testimony of Dr. K, PSY.)
24. The Student has a diagnosis of Autism Spectrum Disorder (ASD). He exhibited deficits in social communication with some restrictive/repetitive interest/behaviors typically observed in children his age with ASD. The Student rarely exhibited changes in facial expression, remaining generally flat, and his language was not typically accompanied by appropriate changes in gesture, gaze, or change of facial expression. He showed little to no expressed pleasure in interacting with the examiner. Regarding play, he exhibited little spontaneous creative or make-believe actions. He presented with unusual sensory behaviors (e.g. repeatedly touching certain parts of objects such as a toy wrench, fixating on a spinning disc). The Student's score on the ADOS-2 led to an unequivocal diagnosis of ASD. (Testimony of Dr. K ;PE #2.)
25. The BASC-3 scores, reported from Parent and GE2, reflect clinically significant scores in the areas of withdrawal, depression, behavioral symptoms, and adaptive skills. (Testimony of Dr. K; PE #2.)
26. The Woodcock-Johnson is a standardized measure of academic achievement. The Student's math skills are in the low average range with math fluency skills in the borderline range. His reading skills were in the average range with reading fluency in the below average range. (Testimony of Dr. K; PE #2.)

27. The TVPS-3 measures a student's visuoperceptual abilities. The Student's abilities in this area were in the borderline range. The Student had difficulty with visual discrimination of similar figures and visual memory. He struggled significantly on tasks of visual closure, form constancy, and spatial relations. These deficits affect the acquisition of letter recognition skills, geometry, and visual spatial tasks and are likely related to the Student's weaknesses in math skills. (Testimony of Dr. K; PE #2.)
28. The Student has demonstrated deficits in social-emotional reciprocity, and maintaining and understanding relationships. He demonstrates significant sensory stimuli, behavioral rigidity, and preoccupations with specific interests. (Testimony of Dr. K.; PE #2.)
29. The Student has deficits in pragmatic language skills. (Testimony of Dr. K, SLP; PE #2, 20.)
30. Based upon her assessments and evaluation, Dr. K recommended that the Student receive an Individualized Education Plan (IEP) tailored to address his deficit areas. She further recommended extended time across all subject areas; avoidance of timed tests whenever possible; additional time to complete assignments; speech language therapy to focus on language pragmatics and social skills training; social work services to address communication and behavioral difficulties; weekly social skills group with peers and adults; math support; and accommodations to assist the Student with self-regulatory challenges. (Testimony of Dr. K; PE #2.)
31. The characteristics of the Student's disability meet the criteria as defined by the term Autism in the IDEA. The Student's disability is Autism as it is defined by the IDEA. (Testimony of Dr. K; PE #2.)

32. The Illinois State Board of Education Definition and Recommended Eligibility Criteria for Autism guidance document recommends that to be eligible for special education and related services, students with autism shall be determined by the presence of at least two (2) Reciprocal Social Interaction behaviors, one (1) Qualitative Impairment of Communication, Language and Symbolic Development behavior, and one (1) Markedly Restricted Repertoire of Activities and Interests behaviors. (Testimony of PSY; IHO #31.)
33. In the Reciprocal Social Interaction behaviors group, the Student displays absent or abnormal social play. He did not engage in make believe play with Dr. K's examiner and Parent confirmed this deficit in her report to Dr. K. The Student experienced a gross impairment in ability to make peer friendships. This was reported to Dr. K by Parents, teachers, and the Student himself. (Testimony of Dr. K; PE #2, IHO #31.)
34. In the Qualitative Impairment of Communication, Language and Symbolic Development group, the Student sometime displays markedly abnormal nonverbal communication, as in the use of eye-to-eye gaze, facial expression, body posture, echopraxia, or gestures to initiate or modulate social interaction. This was demonstrated when the Student rarely exhibited change in facial expression and was generally flat in language. (Testimony of Dr. K; PE #2.) The Student also displayed an absence of imaginative activity, such as play-acting or adult roles, fantasy characters, or animals; lack of interest in stories or imaginary events. The Student would not engage in imaginative play with Dr. K's examiner. Parent also reported this deficit. (Testimony of Dr. K., Parent; PE #2, IHO #31.)
35. In the Markedly Restricted Repertoire of Activities and Interests group, the Student has a persistent preoccupation with parts of objects or attachment to unusual objects.

The Student repeatedly touched parts of a toy wrench and fixated on a spinning disc. (Testimony of Dr. K; PE #2.) The Student also exhibited marked distress over changes in trivial aspects of environment and markedly restricted range of interests and a preoccupation with one narrow interest. Parent reported these behaviors to Dr. K as part of her evaluation. (Testimony of Dr. K; PE #2.)

36. The Student met the recommended eligibility criteria for eligibility and special education and related services appropriated for students with autism per ISBE's guidance document. (Testimony of Dr. K; PE #2, IHO #31.)

37. This Hearing Officer finds the testimony of Dr. K to be credible and persuasive. Dr. K's academic background, training, and experience working with pediatric patients, combined with her direct observations of the Student, establish her as a highly qualified, credible and persuasive witness.

Psychological Evaluation

38. PSY⁶ performed the February 23 & 27, 2017 psychological evaluation of the Student. (Testimony of PSY; PE #19.)

39. PSY reviewed the neuropsychological evaluation of Dr. K and incorporated her testing and results into his evaluation and report. PSY was qualified to administer all of the assessments administered by Dr. K. (Testimony of PSY; PE# 19.)

40. The Autism Diagnostic Observation Schedule (ADOS) is the "gold standard" of assessment in regards to autism. This is the opinion of the medical community. It is the only research based assessment that provides an autism diagnosis with a reliable degree of certainty and validity. (Testimony of Dr. K; PSY.)

⁶ PSY is employed by the District as a school psychologist and has been so employed for 5 years. He holds a Specialist's Degree in school psychology. He is licensed by the State of Illinois as a school psychologist and also holds a bilingual endorsement for special education.

41. PSY administered the KTEA-3. The Student scored in the average range for letter and word recognition. He scored average in math concepts and application and math computation. The Student scored below average in listening comprehension and written expression. (Testimony of PSY; PE #19.)
42. The Student's NWEA MAP scores for Winter 2017 reflect performance in the 7th percentile for reading and the 13th percentile for math. (Testimony of PSY; PE #19.)
The NWEA scores for Spring 2017 reflect performance in the 20th percentile for reading, with a "Low" score in the area of literature and the 10th percentile for math with "Low" scores in all areas. (SD #31.)
43. The Student's Conners-3 assessment reflected that the Student's scores were in the Clinically Significant range in the areas of inattention, hyperactivity/impulsivity, executive functioning, peer relationships and learning problems. (Testimony of PSY; PE #19.)
44. PSY reviewed the results of the tests performed by Dr. K including the ASRS, Woodcock-Johnson, and WISC-V. Dr. K's evaluation was comprehensive and PSY did not disagree with any of Dr. K's testing data. (Testimony of PSY.)
45. PSY observed the Student in his general education classroom and at lunch. In the classroom, PSY observed the Student working in a group of five students. During that time, the Student got up and began walking around the classroom and had to be redirected by the teacher. GE2 reported that the Student was having a good day. (Testimony of PSY; PE #19.)
46. The Student will shut down during class and refuse to respond or complete work. This occurs approximately once per week. (PE #19.)

47. PSY was aware of Dr. K's medical diagnosis of ASD relative to the Student.

However, in PSY's opinion, the IDEA definition of Autism is vague and the Student does not qualify as having autism pursuant to that definition . (Testimony of PSY.)

48. The Student has social skill deficits that are adversely affecting him in the educational environment. His social skill deficits include inattentiveness, inability to stay focused and on task, difficulty with peer relations, hyperactivity, inability to respond appropriately. (Testimony of PSY.)

49. At hearing an ISBE guidance document entitled "Illinois State Board of Education Definition and Recommended Eligibility Criteria for Autism" was referenced by PSY⁷. PSY stated that this guidance was used to evaluate the Student's disability category and eligibility for special education services under the disability category of Autism. (Testimony of PSY.)

50. No testimony or documentary evidence was presented at hearing to show that the eligibility criteria recommended by the guidance document were considered by the school team at the eligibility meeting. (Testimony of PSY.)

51. PSY was responsible for documenting the Student's eligibility determination at the March 3, 2017 meeting. PSY documented that no disability was identified relative to the Student. (Testimony of PSY; PE #10.) PSY believed that the Student did not qualify for special education services pursuant to the Illinois Administrative Code and therefore, the determination was made that the Student had no disability. The specific bases underlying this determination were not documented and PSY was unable to

⁷ The Illinois State Board of Education Definition and Recommended Eligibility Criteria for Autism document was provided by District counsel to Parent's counsel and this Hearing Officer on the first day of the Due Process Hearing. This document was used as a demonstrative exhibit during PSY and Dr. K's testimony. This Hearing Officer is including this document in the record as a demonstrative exhibit identified at IHO Exhibit #31. Parent's counsel did not object to the use of this document at hearing.

articulate them at hearing. The record is devoid of any discussion by the eligibility school team of the Student's ADHD diagnosis. (Testimony of PSY; PE #10.)

52. This Hearing Officer finds that PSY was a licensed school psychologist. Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that while PSY understood the testing and results of Dr. K's evaluation, incorporated her results into his own evaluation, had no basis to disagree with Dr. K's testing or the results thereof, was qualified to administer all of the assessments administered by Dr. K, and agreed that the ADOS is a research based measure designed to diagnose autism to a reliable degree of certainty and validity, PSY chose to ignore all of those findings and conclude that the Student was not on the autistic spectrum and was not eligible for special education services. Further, the PSY testified that the ISBE Definition and Recommended Eligibility Criteria for Autism formed the basis for the denial of the Student's eligibility. However, no testimony or documentary evidence was presented to illustrate that the recommended criteria were even considered by the eligibility team.

53. This Hearing Officer further finds that the Student's social skill deficits were well documented in PSY's report, as were academic deficits in the areas of reading, math, and visuoperceptual abilities.

Social Work Evaluation

54. SW is the school social worker. She has been a school social worker for the past six (6) years. She holds a Bachelor's Degree and a Master's Degree in social work. She is a licensed clinical social worker and a licensed school social worker. (Testimony of SW.)

55. SW performed the Student's social work reevaluation in February 2017. She conducted interviews with the Parent, the Student, and the Student's general education teacher, GE2. She did not observe the Student in the classroom because she had been working with the Student and had a sense of his functioning in the classroom setting. (Testimony of SW; PE #21.)
56. There were documented concerns as follows: The Student performs better in a small group setting; he requires more reminders to accomplish tasks; he struggles with non-preferred tasks; he is unwilling to interact with peers; he does not like coming to school; he is easily upset and has a hard time discussing it; he has difficulty calming down when he becomes upset. The Student's least favorite subject is music. He has only one friend at school and one friend at home. Being at school is a problem for the Student as he thinks the teachers are "bossing him around." (Testimony of SW; PE #21.)
57. SW concluded that the Student had significant social and emotional concerns that impacted his functioning in the educational setting. (Testimony of SW; PE #21.)
58. SW recommended social work services to address the Student's social emotional and behavioral concerns. Further, accommodations were recommended to provide social emotional support for the Student to better enable him to function in the classroom setting. Social work services were increased from thirty (30) minutes per month to forty-five (45) minutes per week of direct services, both pull out and push in services, after the March 3, 2017 eligibility meeting. (Testimony of SW; PE #21.)
59. SW set goals and benchmarks for the Student as part of her progress report. (Testimony of SW; SD #25-26.)

60. SW reported that after the implementation of the social skills goals and benchmarks in March 2017, the Student made progress with pro-social skills and that his progress was tracked by his teachers on a Excel spreadsheet. However, that spreadsheet was not presented at hearing and was not introduced into evidence. (Testimony of SW; SD #26.)
61. Music class was a non-preferred task for the Student. SW and several other teachers developed an alternate plan for the Student for the scheduled music concerts, providing him with a “modified assignment” instead of the dance and singing skills expected. The Student was also graded on the modified assignment rather than on the singing and dance skills expected of other students in the class. (Testimony of SW; PE#21; SD#37.)
62. An FBA was conducted and a BIP developed due to the Student’s inability to respond to non-preferred tasks and inability to verbalize emotions. The BIP was implemented after the eligibility meeting and was part of the Student’s 504 Plan. (Testimony of SW; PE #12.)
63. SW’s evaluation report clearly states that the Student had social emotional concerns that significantly impacted his educational success, his social work minutes were significantly increased to support the Student in deficit areas, the music curriculum and grading was modified for the Student due to his sensory difficulties, and SW created goals and benchmarks to address the Student’s social skill deficits. However, SW testified that she agreed with the eligibility determination that the Student did not require special education services and supports. (Testimony of SW; PE #21.)

Literacy Center Evaluations

64. After the Student was found ineligible for special education services in March 2017, Parent sought additional reading and literacy support for the Student at [REDACTED] University's (■U) Literacy Center. (Testimony of Parent, Dr. V, GE2.)
65. An assessment of the Student's literacy skills was conducted on April 29, 2017 after which the Student received eleven sessions of literacy intervention supports at NIU's Literacy Center. A second assessment was conducted on July 26, 2017 after which the Student attended fifteen out of sixteen sessions of additional literacy intervention supports. (Testimony of Dr. V; PE #31-32⁸.)
66. The Literacy Center assessments were conducted by two licensed Illinois teachers, one with seven years of teaching experience and the other with nine years of teaching experience. Both teachers were graduate students in NIU's master's degree program seeking to obtain reading specialist credentials. Dr. V is the supervisor of the Literacy Center. She supervised both teachers who performed the Student's assessments. Dr. V personally reviewed the protocols and results of the assessments of both teachers. She also double checked the scoring of the individual tests administered before the assessment reports were released to the Parent. (Testimony of Dr. V.)
67. To the best of her knowledge and Parent's there were no testing irregularities when the assessments were conducted. (Testimony of Dr. V, Parent.)

⁸ Parent Exhibits 31-32 were admitted into evidence over District objection. The existence of these assessments came to light after Parent's testimony on the first day of hearing. At the request of this Hearing Officer, Parent produced the reports on September 21, 2017. The District objected to these exhibits and moved to strike same. This Hearing Officer allowed Parent to offer the assessment reports on the second day of hearing pursuant to her Order Denying District's Motion to Strike Parent's Exhibits. (See IHO Exhibit #28.) At the close of the due process hearing, the District renewed its objection as the two teachers who performed the assessments were unable to appear at hearing. However, Dr. V, the supervisor of ■U's Literacy Center appeared and was able to provide foundation for the assessments and authenticate the reports. This Hearing Officer admitted the reports at the conclusion of the hearing indicating that the District's objection went to the weigh to which this Hearing Officer gave the assessment documents rather than their admissibility.

68. The Student's reading and literacy skills were assessed using the Elementary Reading Attitude Survey, Jerry John's Basic Reading Inventory (BRI), Words Their Way Primary Spelling Inventory (WTW), and the Peabody Picture Vocabulary Test – Fourth Edition (PPVT-4). (Testimony of Dr. V; PE#31-32.)
69. At the conclusion of the Summer 2017 session, just prior to the start of the Student's fourth grade year, the Student's oral reading instructional level was from grade 1 through grade 2 and his oral reading frustration level was grade 4. His silent instructional reading level is grade 3 and his silent frustration level is grade 4. The instructional level is the level a reading material a child can read when provided with appropriate instructional assistance from the teacher. (PE #31-32.)
70. Based upon the documentary evidence and testimony of Dr. V at hearing, this Hearing Officer finds the conclusions of the ■■■ U Literacy Center assessments to be reliable indicators of the Student's reading performance levels at the beginning of his fourth grade school year. This testimony and documentary evidence was further corroborated by the testimony of GE1, Dr. K, Parent, and the Student's standardized NWEA MAP test scores.
71. Based upon the above, this Hearing Officer finds that the Student has deficits in reading fluency and comprehension. While this information was not available to the school team at the time of the eligibility meeting, the team should have known that the Student had academic reading deficits based upon the testing and results of Dr. K, the Student's NWEA MAP score results, and GE1.⁹ Further, Parent, through counsel, requested reconsideration of the eligibility determination in May 2017. This request was summarily dismissed by CM on May 22, 2017. (Testimony of Parent; PE #14.)

⁹ The eligibility team did not bother to request any information from GE1. (Testimony of GE1.)

72. Parent reported to GE2 and SW that the Student was enrolled at NIU's Literacy Center for reading support. (Testimony of Parent, GE2, SW.)
73. During the Student's third grade school year, he would shut down often and would not participate as he did not want to be at school. When he refused to participate, it would take a long time and considerable prompting for him to vocalize what was upsetting him. He would become very angry and it was hard for him to calm down and continue working once he was agitated. This affected his ability to function in the classroom. (Testimony of GE2; PE #21.)
74. The Student struggled to work independently in the classroom, had difficulty staying focused on tasks after they were initiated, was overwhelmed by multiple tasks, and was easily distracted by noises and other students. (Testimony of GE2.)
75. In his third grade classroom, GE2 attempted to provide positive reinforcements, small group¹⁰ and one on one instruction, extended time to complete tasks, visual aids, breaking down assignments into smaller pieces, and modifying class assignments. These are special education type supports and the Student was more successful in the classroom with those supports. (Testimony of GE2; SD#35.)
76. While GE2 testified that these supports assisted the Student to be more successful in the classroom and make academic progress, no documentary evidence was presented at hearing to support the claim that the Student was making academic progress.
77. After the Student was denied eligibility for special education services, his classroom supports were increased under his 504 Plan. (Testimony of SW, GE2, PSY; PE #11, 21.)

¹⁰ GE2 testified that her small group instruction contained groups of 4 to 5 students.

78. No evidence was presented at hearing regarding Parent's request for compensatory education.

CONCLUSIONS OF LAW

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

Free Appropriate Public Education (FAPE)

The Individuals with Disabilities Education Act ("IDEA") guarantees children with disabilities the right to a free, appropriate, public education ("FAPE"). 20 U.S.C. §1412(a)(1). IDEA defines a child with a disability as a child having a specific physical, mental, or emotional condition who, because of the disability, needs special education and related services. 34 C.F.R. §300.8. To be eligible for special education, the student must fit the statutory definition of a "child with a disability." 20 U.S.C. §1401(a)(1)(A); 34 C.F.R. §300.8. Specific evaluation procedures must be used for determining whether a child fits the statutory definition of a "child with disabilities." See 34 C.F.R. 300.8(a)(1), 300.304-300.311. In addition, all of the statutory definitions require that the disability "adversely affect the child's educational performance." See 34 C.F.R. 300.7(b)(1-13); *Mary P ex rel. Michael P. v. Illinois State Bd. of Educ.*, 919 F. Supp. 1173 (N.D. Ill. 1996.) If the student is deemed eligible, then the IEP team determines precisely what services are appropriate. These decisions are outlined in an Individualized Education Program ("IEP"). See 34 C.F.R. §§300.340-300.350; 23 Ill. Admin Code §226.5, 226.562.

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In Illinois, each school district shall be responsible for seeking out and identifying all children from birth through age twenty-one who may be eligible for special education and related services. 34 C.F.R. §300.111(a)(1)(i). Procedures have been developed so that school districts can fulfill the child find responsibilities. 23 Ill. Admin Code §226.100.

Standards for Evaluations

The District has the burden of proof for the appropriateness of its evaluations. 105 ILCS 5/14-8.02(b); *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, 41 F.3d 1162, 1167, 1169 (7th Cir. 1994). An appropriate evaluation is one which complies with the pertinent federal and state regulations. *Krista P. v. Manhattan School District*, 255 F. Supp. 2d873, 887 (N.D. Ill. 2003).

An evaluation must assess a student in all areas related to the suspected disability, and be sufficiently comprehensive to identify all of the Student's special education and related service needs, whether or not linked to the disability category in which the child has been classified. 34 C.F.R §300.304(c). When conducting an evaluation, the District must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child. 34 C.F.R. §300.304(b)(1). The evaluation process must not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. 34 C.F.R. §300.304(b)(2). The evaluator must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. §300.304(b)(3). In addition, the District must ensure that the assessments and

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other evaluation criteria are selected and administered so as not to be discriminatory on a racial or cultural basis; are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; are used for the purposes for which the assessments or measures are valid and reliable; are administered by trained and knowledgeable personnel; and are administered in accordance with any instructions provided by the producer of such assessments. 34 C.F.R. §300.304(c). The Illinois School Code identifies a “qualified professional” as an individual who holds credentials to evaluate the child in the domain or domains for which an evaluation is being sought. 105 ILCS 5/14-8.02(g-5). In addition, the Illinois School Code sets the standard of “a carefully completed case study.” 105 ILCS 5/14-8.02(6).

Psychological Evaluation

Parent contends that the District’s psychological evaluation failed to assess the Student in all areas of suspected disability. This contention is well supported by the hearing record.

Evaluations must be administered by “trained and knowledgeable personnel,” pursuant to 34 C.F.R. 300.304(c)(1)(iv). PSY performed the psychological evaluation of the Student in February 2017. He observed the Student in the classroom on a good day and at lunch, reviewed Student records and academic standardized test scores, and reviewed the evaluation of Dr. K. He completed the Psychological Report, and attended the Eligibility meeting on March 3, 2017. (FF#38, 45.) While PSY understood the testing and results of Dr. K’s evaluation, incorporated her results into his own evaluation, had no basis to disagree with Dr. K’s testing or the results thereof, was qualified to administer all of the assessments administered by Dr. K, and agreed that the ADOS-2 is a

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research based measure designed to diagnose autism to a reliable degree of certainty and validity, PSY chose to ignore all of those findings and conclude that the Student was not on the autistic spectrum. (FF #52). PSY believed that IDEA's definition of Autism was too vague and further indicated that the Student did not meet the ISBE guidance document criteria for a student with Autism. (FF #52.) He understood how Dr. K arrived at the Student's diagnosis of ASD. However, he did not agree with it but was unable to articulate the basis for his disagreement with the diagnosis. (FF#39-45, 51-52.) Further, the Student has been diagnosed with ADHD and the record is replete with documentation of the Student's behavioral struggles. (FF#8, 14, 17, 20, 25, 43, 48.) However, it appears that this disability category was not even considered by the school team. (FF #51.)

While PSY was an experienced school psychologist and possessed the requisite credentials to conduct the evaluations that he administered (FF #39), he clearly disregarded the conclusions of those assessments and determined that the Student had no disability. Further, he was unable to articulate any basis for this conclusion. (FF#52). Based upon the testimony and documentary evidence introduced at hearing, this Hearing Officer finds that PSY does not meet the requirement of "trained and knowledgeable personnel" as required by the IDEA.

An evaluation must assess a student in all areas related to the suspected disability, and be sufficiently comprehensive to identify all of the Student's special education and related service needs, whether or not linked to the disability category in which the child has been classified. 34 C.F.R §300.304(c). PSY assessed the Student in the areas of academic achievement and social emotional functioning. (FF#39-45.) However, the Student's academic functioning reflected by the Student's NWEA MAP scores showed "Low" scores in literature and all areas of math skills assessed. (FF# 42.) Further Dr.

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K's assessment reflected characteristics of a disability which impacted the Student's academic skills, including letter recognition, geometry, and visual spatial task skills which were related to his weaknesses in math skill. (FF#26-27.)

There were also noted social skill and behavioral deficits that are associated with ASD and ADHD. (FF#24, 28, 29.) However, special education and related services were not recommended. Based upon the testimony and documentary evidence presented at hearing, the Hearing Officer finds that the District Psychological Evaluation conducted on February 23 & 27, 2017 was inappropriate. It failed to ultimately determine that the Student had the disabilities of ASD and ADHD, despite overwhelming evidence to the contrary, and failed to be sufficiently comprehensive to identify all of the Student's special education and related service needs. It was simply not a "carefully completed case study" as required by Illinois law.

Social Work Evaluation

Evaluations must be administered by "trained and knowledgeable personnel," pursuant to 34 C.F.R. 300.304(c)(1)(iv). In conducting the evaluation, the District must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child to assist in determining the content of the IEP including information provided by the parents of the child and current classroom based observations. 34 C.F.R. 300.304(b)(1)(ii) and 34 C.F.R. 300.305(a)(1)(ii).

Based upon the findings (FF# 54) above, SW is a licensed school social worker. SW evaluated the Student in February 2017. Her evaluation documented social and emotional concerns and deficits of the Student and ultimately concluded that these concerns impacted his functioning in the classroom setting. (FF#56-57.) SW reported

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that, due to the Student's difficulty with music class, a modified curriculum on which the Student was graded had been designed and implemented. (FF#61.) SW testified that she agreed with the eligibility team determination that the Student did not have a disability and therefore did not qualify for special education services. (FF#63.) However, immediately after the eligibility meeting, the Student's social work minutes were dramatically increased, from thirty (30) minutes per month to forty-five (45) minutes per week and additional accommodations were provided. (FF# 58-59.) An FBA was conducted and a BIP implemented. (FF#62.) Again, SW clearly disregarded the clear, well documented findings of her evaluation and determined that the Student was not eligible for special education services, as he did not have a disability. Based upon this, this Hearing Officer finds that SW does not qualify as "trained and knowledgeable personnel" pursuant to 34 C.F.R. 300-304(c)(1)(iv). Further, while SW used a variety of assessment tools to evaluate the Student, she ignored the results thereof. This Hearing Officer finds that this is simply not an appropriate evaluation and a "carefully completed case study" as required by IDEA and Illinois law.

As part of an initial evaluation, and as part of any reevaluation under this part, the IEP Team and other qualified professionals must review existing evaluation data on the child including evaluations and information provided by the parents of the child. 34 C.F.R. §300.305(a)(1)(i). Parent provided the evaluation she sought from Dr. K to the school eligibility team for consideration in addition to her own knowledge and observations of her Student. This Hearing Officer finds the psychological evaluation conducted by Dr. K to be appropriate in all areas. Dr. K is a licensed clinical neuropsychologist with extensive experience working with pediatric patients. (FF#19.) She qualifies as "trained and knowledgeable personnel," pursuant to 34 C.F.R.

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300.304(c)(1)(iv). This was undisputed by the District at hearing. Dr. K used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child including the ADOS-2 to assist in developing a clear picture of the Student, his disability and his unique educational needs as required by 34 C.F.R. 300.304(b)(1)(ii) and 34 C.F.R. 300.305(a)(1)(ii). (FF#20-27.) Dr. K's evaluation contained specific recommendations designed to address the Student's unique educational needs and to enable him to make educational progress. (FF #30.) Further, PSY utilized Dr. K's testing and assessment results as the basis for his own evaluation of the Student. (FF #39.) This Hearing Officer finds the psychological evaluation of Dr. K to be "a carefully completed case study" and to be appropriate in all areas. However, PSY, SW, CM, GE2 and the remaining members of the school eligibility team chose to disregard her findings, conclusions and recommendations. Further, the hearing record is devoid of any evidence illustrating that Parent's knowledge and observations of the Student were considered at all in the eligibility determination.

While no evidence was introduced at hearing regarding the cost to Parent of Dr. K's evaluation, as a remedy for the District's failure to provide appropriate psychological and social work evaluations, this Hearing Officer hereby orders the District to pay for the neuropsychological evaluation of Dr. K. Parent is directed to submit to the District within thirty (30) calendar days of entry of this Order either evidence of payment or the invoice for Dr. K's evaluation. The District shall provide reimbursement for same within thirty (30) calendar days immediately thereafter. Further, this Hearing Officer directs that the Student shall receive sixty (60) minutes per week of pull out and push in social work instruction, to include a small weekly social skills group, to address social communication and behavioral difficulties consistent with Dr. K's evaluation.

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Disability

Disability under the IDEA refers to one of the thirteen listed disabilities. Autism is a listed disability and means “a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects the child’s educational performance.” 34 C.F.R. §300.8(c)(1).

Dr. K and [REDACTED] Hospital both diagnosed the Student with Autism (ASD). (FF#20, 24.) Dr. K administered the ADOS-2 which is considered to be the “gold standard” assessment for identifying children with ASD within the medical community. It is a researched based, standardized method that is valid and reliable. The Student’s scores on the ADOS-2 led to an unequivocal diagnosis of ASD. (FF#22-24.) The ASRS, another assessment to identify autism via rating scales by Parent and teachers was also administered and identified the Student as having ASD. (FF#21.) Further, Dr. K reviewed IDEA’s definition of Autism at hearing and credibly testified that the Student’s disability characteristics met that definition. (FF#24, 31.)

The District contends that the Student is not a Student with a disability because he does not meet the ISBE guidance criteria for Autism. First, ISBE’s guidance criteria is simply that – guidance. It is not the requirement and language of IDEA. Second, this Hearing Officer finds that overwhelming evidence in the record supports a disability determination of Autism under both the language of IDEA and ISBE’s guidance criteria. PSY asserted that the Student must meet the ISBE guidance document’s (IHO #31) criteria for services in order to obtain the Autism diagnosis. However, the record is devoid of any evidence to suggest that these criteria were even considered by the eligibility team. (FF #50). PSY was unable to articulate the substance of any discussion or to provide any documentation regarding evaluation of the criteria by the school

eligibility team. (FF#49-50.) In contrast, Dr. K, when questioned about the specific ISBE guidance criteria, was able to articulate the criteria the Student met and provide specific examples of why the Student met those criteria, referring to the specific characteristics and manifestations of his disability. (FF# 32-35.)

Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that the Student is a student with a disability pursuant to IDEA under the disability category of Autism/ASD.

Other health impairment is a listed disability under IDEA. Other health impairment “means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems such as . . . attention deficit disorder or attention deficit hyperactivity disorder.” 34 C.F.R. §300.8(c)(9)(i). The Student was diagnosed with ADHD by Lurie Children’s Hospital and Dr. K. (FF #20.) The results of the Connors-3 and BASC-3 resulted a clinical classification of ADHD and clinically significant scores in the areas of withdrawal, depression, behavioral symptoms, and adaptive skills for the Student. (FF #6, 25.) Both Dr. K and PSY agreed with the results of these assessments. (FF#20, 39, 43, 52.) The Student had documented behavioral and social skill deficits in the areas of inattentiveness, inability to stay focused and on task, difficulty with peer relations, hyperactivity, inability to respond appropriately. (FF#48.) His 504 Plan was immediately amended after the eligibility meeting and documents supports for his ADHD diagnosis. (FF# 77.) However, there was no testimony or documentary evidence presented at hearing to illustrate that this disability category was discussed or evaluated by the school eligibility team.

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This Hearing Officer finds that based upon the testimony and documentary evidence presented at hearing that the Student also has a disability diagnosis of ADHD. Therefore, the Student is a child with a disability pursuant to the IDEA under the disability category of Other Health Impairment (OHI).

Adverse Affect on Educational Performance

Pursuant to IDEA, a child's Autism diagnosis must adversely affect the child's educational performance. 34 C.F.R. 300.8(c)(1)(i). "Educational performance' means more than a child's ability to meet academic criteria. It must also include reference to the child's development of communication skills, social skills, and personality, as the Code itself requires." *Mary P ex rel. Michael P. v. Illinois State Bd. of Educ.*, 919 F. Supp. 1173 (N.D. Ill. 1996.); *See* 34 C.F.R. 300.533(a)(1). While the District maintains that the Student's deficits did not adversely impact his educational performance, this Hearing Officer finds this argument to be disingenuous and unsupported by the documentary evidence and hearing record. First, SW and PSY seemed to believe that academic deficits were required in order to find the Student to be a child with a disability and thus entitled to special education services. This is clearly contrary to the law as determined by the *Mary P* case cited above and the contrary to the evidence presented at hearing. While there was testimony that the Student's NWEA MAP scores were increasing, those scores also illustrated a Student functioning below the average range in reading and math skills. (FF #42.) GE1 provided evidence that the Student made very little academic progress during second grade and was performing one year behind his peers in reading and one-half to one year behind his peers in math. (FF#7.) However, her input was not solicited for purposed of the eligibility determination. Dr. K's assessments illustrated language

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and mathematical skill deficits related his disability. (FF #27, 30.) Further, Parent advised GE2 and SW that she had enrolled the Student in NIU's Literacy Center to obtain literacy intervention services. This information appeared to have been known to GE2 and SW at the time of the eligibility determination. Rather than being further investigated, this information was ignored by the District.

While the District did not have the ■U Literacy Center Evaluation reports at the time of the eligibility determination meeting, the dates of the assessments are close in time to the eligibility determination with the initial report dated April 29, 2017. These assessments used a variety of tools to evaluate the Student (FF# 68) and ultimately concluded at the end of the Summer 2017 session that the Student, at the start of his fourth grade year, was reading at an oral instructional level from grade 1 through grade 2, with his oral reading frustration level at fourth grade level. His silent instructional reading level was grade 3 material and his silent frustration level at grade 4. (FF#69.) The District argues that these assessments are unreliable as the teachers who conducted them were unable to appear at hearing. This Hearing Officer finds to the contrary. First, Dr. V testified to the qualifications of the teachers who administered the assessments and prepared the reports. Dr. V personally supervised both teachers, reviewed both reports and the assessment results contained therein for accuracy before they were released to Parent. (FF#66-67.) Further the contents of the literacy assessments were corroborated by the testimony of GE1, Dr. K, Parent, and the Student's standardized test scores. Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that the Student had academic deficits in reading and math skills, those deficits were documented and the information was available to the District. Further, these deficits were related to the Student's disability diagnosis of ASD. The Student's ASD

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adversely affected his educational performance in the academic areas of reading and math.

In addition, it was well documented that the Student had social and emotional concerns that impacted his functioning in the educational setting. While SW, PSY, and GE2 all provided conflicting, inconsistent testimony at hearing on this point, PSY and SW's evaluation reports, the Student's 504 Plan documents, and the Student's FBA/BIP all reflect emotional regulation, social interaction, and behavior management issues that affect his academic progress, involvement and overall success in the general education classroom. (FF #48, 53, 56-57, 63, 73-77.) This documentary evidence was corroborated by the testimony of Dr. K and GE1. (FF# 5-7, 24-29.)

Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that the Student's ASD and ADHD diagnoses adversely impacted his functioning and performance in the educational setting due to the impact on his academic skills, social emotional functioning and behavior in the classroom.

Special Education Services

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. 34 C.F.R. §300.39(a)(1). Specially designed instruction means adapting, as appropriate, to the needs of an eligible child, the content, methodology or delivery of instruction to address the unique needs of the child that result from the child's disability; and ensure access of the child to the general curriculum. 34 C.F.R. §300.39(b)(3).

While the District contends that the Student did not qualify for and did not need special education services, this Hearing Officer finds this contention to be without merit. The testimony and documentary evidence admitted at hearing, show that the District's

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actions were in fact to the contrary. During his fourth grade year, the Student struggled to work independently in the classroom, had difficulty staying focused on tasks after they were initiated, was overwhelmed by multiple tasks, and was easily distracted by noises and other students. (FF#74.) To attempt to address these issues, GE2 provided the Student with positive reinforcements, small group and one on one instruction, extended time to complete tasks, visual aids, breaking down assignments into smaller pieces, and modifying class assignments. (FF# 75.) The Student was more successful in the classroom with those supports. (FF #75.) Further, due to the Student's sensory issues and difficulty in music class, he was provided with modified assignments and was graded based upon those modified assignments. (FF #61.) Immediately after the Student was denied eligibility for special education services, his social work and psychology service minutes were increased. (FF#58.) An FBA was conducted and a BIP implemented to address behavioral concerns. (FF#62.) SW set goals and benchmarks for the Student as part of her progress report. (FF# 59.) The Student was provided with additional accommodations in his 504 Plan. (FF#15-17.) Although the District contends that the Student did not need special education services, the actions of the District clearly illustrate that it did not believe this to be true. The District was attempting to provide the Student with special education services without specifically calling them special education services and without creating the Individual Education Plan (IEP) required by IDEA. This Hearing Officer finds that the District's actions themselves illustrated that the Student did in fact need special education services. Further, the District's decision to circumvent the mandates of the IDEA unequivocally resulted in a denial of FAPE to this Student.

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This Hearing Officer finds that the District denied the Student FAPE when it failed to determine him to be a child with a disability pursuant to 34 C.F.R. §300.8(a). Further, the characteristics of his disabilities adversely impacted his performance in the educational setting thus requiring the need for special education and related services.

Compensatory Education

Under the IDEA, a disabled child is entitled to a free public education tailored to his special needs until the age of 21. 20 U.S.C. §1400 *et. seq.* Although the IDEA does not explicitly provide for compensatory education beyond that age, “it authorizes the court to ‘grant such relief as the court determines appropriate.’” *Bd. of Educ. of Oak Park & River Forest High Sch. Dist. 200 v. Todd A.*, 79 F.3d 654, 656 (7th Cir. 1996) (quoting 20 U.S.C. §1415(e)(2) (now 20 U.S.C. §1415(i)(2)(c)(iii))). The Seventh Circuit has recognized that, under this language, district courts have the discretion to grant compensatory education as a remedy for past violations of the IDEA. *Id.* (“[T]his authorization encompasses the full range of equitable remedies and therefore empowers a court to order adult compensatory education if necessary to cure a violation’.) *Evanston Cmty. Consol. Sch. Dist. No. 65 v. Michael M.* 356 F.3d 798, 803 (7th Cir. 2004). “The inquiry must be fact-specific and, to accomplish IDEA’s purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 365 U.S. App. D.C. 234 (D.C. Cir. 2005.) “Compensatory awards should aim to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA.” *Petrina W. v. City of Chicago Public School District*, 2009 WL 5066651, at *3

(N.D. Ill. Dec. 10, 2009) *citing Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 365 U.S. App. D.C. 234 (D.C. Cir. 2005.)

Although, compensatory education is requested by Parent, no evidence was presented at hearing regarding the services needed, duration, and costs thereof to place the Student in the position in which he would have been but for the District's denial of FAPE. (FF #78.) Presentation of this evidence would have been difficult for Parent as the Student does not currently have an Individual Education Plan (IEP) reflecting his present levels of performance in deficit areas, the services needed to address those deficits, and goals and benchmark objectives to assist him in making educational progress. As his current level of functioning has not been determined, it is difficult for this Hearing Officer to determine where he would have been functioning, but for the District's denial of FAPE and what level of services are required to compensate for the FAPE denial. Therefore, due to this absence in the hearing record, this Hearing Officer will not consider Parent's compensatory education claim at this time. This does not preclude the Parent from refiling her due process complaint notice as to this issue after the creation of the Student's IEP¹¹. Therefore, Parent's compensatory education claim is dismissed without prejudice.

The hearing evidence reflected that Parent expended considerable efforts to seek out any and all available resources to assist with the diagnosis of the Student's disability and to provide him with additional supports and services in his deficit areas. Parent is to be commended for her efforts and determination in seeking out and pursuing these resources.

ORDER

¹¹ The District is invited to consider this claim when creating the Student's IEP and to further consider providing services to the Student to compensate for those lost due to the denial of eligibility on March 3, 2017.

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

1.) The District shall pay for the cost of the Independent Neuropsychological Evaluation completed by Dr. K of the Student within 30 calendar days of submission by the parent of either evidence of payment to Dr. K for the services rendered or, if payment has not been made but incurred, submission of the invoice from Dr. K seeking payment for the services rendered. The Parent has 30 calendar days from entry of this Order to provide the District with either evidence of payment or the invoice.

2.) The Student is deemed eligible under the IDEA for special education services pursuant to the Autism/ASD and ADHD disability categories of the IDEA, with Autism/ASD being the primary eligibility category. The District shall convene an IEP team meeting within fifteen (15) school days of entry of this Order to develop an appropriate IEP for the Student. At this IEP team meeting, the IEP team shall –

a.) determine the Student's present levels of performance in the areas of reading and math skills, and set forth in the statement of present levels in the IEP the findings of Dr. K and the NIU Literacy Center assessment. Appropriate goals and benchmarks shall be written and included in the IEP to address the reading and math needs as identified in the findings of Dr. K and the NIU Literacy Center assessment.

b.) provide the Student in the IEP with pull out reading and math instruction in a small group instructional setting of no more than five (5) total students for the appropriate number of service minutes per week.

c.) include in the Student's IEP sixty (60) minutes per week of pull out and push in social work instruction with corresponding appropriate annual goals to include a

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small weekly social skills group to focus on pro-social behavior and executive functioning.

d.) address the Student's deficits in pragmatic language skills via the provision of related services and appropriate goals and benchmarks in the IEP consistent with the recommendations of Dr. K.

e.) modify the Student's curriculum, assignments, and grading for class periods which involve overwhelming sensory experiences and include a statement in the IEP of the modifications. Such modification shall include, but is not limited to, the Student's music class.

3.) The Student's current BIP dated March 9, 2017 shall remain in place.

4.) The existing Section 504 Plan accommodations shall be included in the Student's IEP to the extent that they are consistent with the recommendations of Dr. K.

5.) Based upon the lack of evidence in the hearing record, Parent's request for compensatory education services is hereby dismissed without prejudice.

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

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

NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the

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decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

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

Dated: November 6, 2017

/s/: Janet K. Maxwell-Wickett

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]

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APPENDIX A

Aden Santos v. City of Chicago SD 299
Case No: 2017-0498

Child	██████████
Attending School	██████████ (WB)
Child's Parent(s)/Petitioners	██████████ (Mother)
Joint Witnesses:	
School Psychologist	██████████ (PSY)
Case Manager	██████████ (CM)
School Social Worker	██████████ (SW)
General Education Teacher	██████████ (GE2)
Speech Language Pathologist	██████████ (SLP)
Private Neuropsychologist	Dr. ██████████ (Dr. K)
Parent's Witnesses:	
General Education Teacher	██████████ (GE1)
Literacy Specialist	Dr. ██████████ (Dr. V)

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CERTIFICATE OF SERVICE VIA REGULAR MAIL

I, the undersigned Janet Maxwell-Wickett, certify that on November 6, 2017, a copy of (add list of documents here) was/were served upon the following persons via regular US Mail delivery by depositing the same in the United States Mail, in an envelope securely sealed, postage prepaid, and legibly addressed to the addresses set forth below:

CERTIFICATE OF SERVICE VIA CERTIFIED MAIL

I, the undersigned Janet Maxwell-Wickett, certify that on November 6, 2017, a copy of (add list of documents here) was/were served upon the following persons via certified US Mail delivery by depositing the same in the United States Mail, in an envelope securely sealed, postage prepaid, return receipt requested and legibly addressed to the addresses set forth below:

CERTIFICATE OF SERVICE VIA EMAIL

I, the undersigned Janet Maxwell-Wickett, certify that on November 6, 2017, a copy of (add list of documents here) was/were served upon the following persons via email transmission by attached said document(s) in pdf format to the email addresses set forth below:

Brent Ray
Kirkland & Ellis Llp

[REDACTED]
[REDACTED]
[REDACTED]

Lucille Blackburn
Due Process And Mediation, Chicago Public Schools

[REDACTED]
[REDACTED]
[REDACTED]

Andrew Eulass
Due Process Coordinator
Illinois State Board of Education
Division of Special Education Services
100 N. 1st Street
Springfield, IL 62777

Dated: November 6, 2017
Signed:



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