

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

_____, a minor, by and through)
his parent, _____¹,)
)
Petitioners,)
)
- v -)
)
_____ CUSD _____,)
)
Respondent.)

Case No. 2018-0219

Alan G. Schuster
Hearing Officer

DECISION AND ORDER

I. JURISDICTION:

Jurisdiction to adjudicate the issues raised in Petitioner’s Complaint is afforded under the Individuals with Disability Act (IDEA), 20 USC §1400, *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a, *et seq.*

II. PROCEDURAL HISTORY:

On December 20, 2017 the Petitioner, _____ (_____ or Petitioner or Student) a 19-year-old High School student eligible for special education services, served his Due Process Complaint Notice (DPCN) requesting the appointment of an Impartial Due Process Hearing Officer (IHO) to determine whether or not the Respondent, _____ Unit School District _____, (District or _____ or Respondent) denied him a free appropriate public education (“FAPE”).

¹ Personal identifying information is provided in Appendix A.

This IHO was appointed to hear this matter on December 22, 2017. The Student is represented by his parent Angie T. (Parent) and the District is represented by its counsel, Brandon Wright of Miller, Tracy, Braun, Funk, & Miller, Ltd..

On December 22, 2017, an initial status teleconference call was set for January 12, 2018.

On December 28, 2017, the District served its Response to the Student's Due Process Complaint.

On January 12, 2018, this IHO entered an Order continuing the matter to February 22, 2018 for a Pre-hearing Conference call with both parties.

On February 20, 2018, Student served his Motion For Continuance of the Pre-hearing Conference to allow additional time to prepare its Pre-hearing Conference disclosures.

On February 21, 2018, the District served its Pre-hearing conference witness and document disclosures.

On February 22, 2018, the District served its Motion For Continuance of the Pre-hearing Conference to allow additional time for the parties to complete preparation for the conference and also requested an extension of the 45 Day timeline which this IHO granted and continued the matter to March 2, 2018 for a Pre-hearing conference.

On February 23, 2018, this IHO granted the parties' Joint Motion To Extend the 45 Day Timeline which was extended to April 13, 2018.

On March 1, 2018, the District served its Pre-hearing Conference witness and document disclosures.

On March 2, 2018, the Student served his Pre-hearing Conference witness and document disclosures. On this same date a Pre-hearing Conference was held with both parties. Upon

conclusion, a Prehearing Report And Order and an Amended Prehearing Report And Order was served by this IHO setting this matter for hearing on May 9-11, 2018.

On March 3, 2018, this IHO granted the parties' Joint Motion To Extend the 45-Day Timeline which was extended to May 21, 2018 to allow sufficient time to complete the hearing and for this IHO to issue his Decision.

On March 29, 2018, Student requested this IHO to issue 4 Subpoenas to compel the appear of witnesses and production of documents for hearing, which was granted.

On April 4, 2018, Student served his Motion To Compel the District to produce school records and on the same date this IHO served his Briefing Order allowing the District time to file a Response and set the matter for hearing on April 17, 2018.

On April 8, 2018, the District served its Response to Student's Motion To Compel.

On April 17, 2018, this IHO issued his Order denying the Student's Motion To Compel as being moot as all records requested were produced and granted the Student's oral Motion for leave to file an Amended Due Process Complaint.

On April 24, 2018, the Student served its Amended Due Process Complaint.

On April 25, 2018, the District served its Notice Of Insufficiency which was granted by this IHO's Order on April 26, 2018. The Student was granted leave to file a Second Amended Complaint by May 2, 2018.

On May 4, 2018, on this IHO's own Motion, Student was granted additional time, to May 18, 2018, to file his Second Amended Due Process Complaint which the Student did serve on May 18, 2018.

On May 22, 2018, a status call was conducted and the matter was set for a Pre-hearing Conference on June 11, 2018.

On May 25, 2018 the District served its Response to Petitioner's Second Amended Complaint.

On June 11, 2018, the matter was rescheduled for a Pre-hearing Conference on July 9, 2018 to allow the parties additional time to complete their state-sponsored resolution/mediation efforts.

On July 9, 2018, the matter was continued for a Pre-hearing Conference to July 16, 2018 to allow the Student additional time to complete and serve his Pre-hearing Conference witness and document disclosures.

On July 16, 2018, a Pre-hearing Conference was conducted with the parties to clarify the issues to be presented at hearing and to set hearing dates.

On July 16, 2018, this IHO served his Second Amended Prehearing Report And Order setting the matter for hearing October 23-25, 2018 and which, by agreement, extended the 45-Day timeline to November 5, 2018.

On August 23, 2018, this IHO granted Petitioner's Motion For Extension of Time To Produce Records to September 30, 2018.

On October 16, 2018, Petitioner filed a Motion For Extension Of Time to serve its 5-Day Disclosures which was denied by this IHO on the same date.

On October 18, the District filed its Motion To Exclude Documents and Witnesses Not disclosed On October 16, 2018.

On October 19, 2018 a final Prehearing Conference was conducted with the parties at which time the Petitioner withdrew a number of witnesses to be presented at hearing and entered and continued District's Motion To Exclude Witness and Documents Not Disclosed On October 16, 2018. On this same date this IHO entered an order granting Petitioner until 5 pm this same

date to deliver its 5-Day witness and document disclosures to District's counsel and continued the matter to October 22, 2018 for hearing on District's Motion To Exclude Witness and Documents if necessary, and to address any issues with documents and/or the parties' putative joint Stipulations of Facts.

On October 22, 2018, a final Prehearing was conducted with the parties at which time ruling on the District's Motion To Exclude Witness and Documents was reserved.

The Hearing commenced October 23, 2018². At the time the hearing was commenced, the parties tendered written Stipulations Of Fact which were accepted and received into evidence by this IHO which was subsequently marked by this IHO as "IHO Ex. 1" for purposes of identification. Each party called a number of witnesses to testify under oath at the Hearing and each party was provided the opportunity to cross-examine the witnesses following direct examination.

At the conclusion of the witness testimony, each party offered documents to admit into evidence. Over the relevancy objections of the District, the Petitioner's documents No's P15-1 and P18-1 were accepted and received into evidence. The District's documents offered and received into evidence, without objection, are noted below.

The parties then presented closing arguments and the Hearing was concluded and closed on October 24, 2018.

III. ISSUE PRESENTED FOR ADJUDICATION:

1. WHETHER OR NOT THE DISTRICT FAILED TO PROVIDE STUDENT A FREE APPROPRIATE PUBLIC EDUCATION (FAPE) BY FAILING TO ALLOW THE PARENT AND/OR STUDENT THE OPPORTUNITY TO PARTICIPATE MEANINGFULLY IN THE CREATION OF STUDENT'S INDIVIDUALIZED

² The following persons were in attendance each day of the Hearing: [REDACTED], (the Student's mother who served as Student's advocate each day of the Hearing); the Student, [REDACTED]; his brother, [REDACTED]; the District's counsel, Brandon Wright and Christine Christensen; and the District's representative, [REDACTED].

EDUCATION PROGRAM (IEP) INCLUDING THE DETERMINATION OF STUDENT'S PLACEMENT.

2. WHETHER OR NOT THE DISTRICT DENIED STUDENT A FAPE BY FAILING TO PROVIDE STUDENT AN IEP REASONABLY CALCULATED TO ENABLE HIM TO MAKE EDUCATIONAL PROGRESS APPROPRIATE IN LIGHT OF HIS CIRCUMSTANCES.

3. WHETHER OR NOT THE STUDENT WAS DENIED A FAPE BY THE DISTRICT'S FAILURE TO PROPERLY IMPLEMENT STUDENT'S DECEMBER 13, 2017 IEP BY PROVIDING STUDENT A 12TH GRADE CLASS SCHEDULE INCONSISTENT WITH WHAT IS PROVIDED FOR IN HIS 12/13/17 IEP.

IV. REMEDIES REQUESTED BY STUDENT:

Petitioner request this Hearing Officer (IHO) to find that the District has denied Student a FAPE and requests this IHO to order that an Independent Educational Evaluation (IEE) be performed at the District's expense, that that any factual inaccuracies contained in the Student's IEP be ordered corrected, and that compensatory educational services be ordered by way of private tutoring.

V. REMEDIES REQUESTED BY THE DISTRICT:

The District denies the Student has been denied a FAPE and requests this IHO to find the Student's evaluation, eligibility classification and IEP are appropriate and that the Petitioner's request for an IEE at the District's expense be denied.

VI. WITNESS PRESENTED FOR TESTIMONY AT HEARING:

On Behalf Of Petitioner:

██████████ - Brother ("ALT")

██████████ - Mother ("AT")

██████████ - Student ("ST")

On Behalf of Respondent:

██████████-School Psychologist (“RM”)

██████████ - School Social Worker (“KB”)

██████████ - School Social Worker (“BL”)

██████████ - Teacher (“SH”)

██████████ -Principal (“TD”)

██████████ -Executive Director EIASE (“TR”)

██████████ - Special Education Administrator (“RL”)

VII. DOCUMENTS OFFERED AND RECEIVED INTO EVIDENCE:

Student’s Exhibits: P15-1, P18-1

District’s Exhibits: R1, R2, R3, R4, R5, R6, R7, R9, R10, R15, R17, R19, R21, R22, R24, R25, R27, R35, R42, R45, R47, R48, R49, R50, R51, R53

Hearing Officer Exhibit: IHO 1 (Stipulations Of Fact)

VIII. BURDEN OF PERSUASION:

With respect to the District's request for a due process hearing in response to a denial of the Parent's request for an IEE, the District has the burden of persuasion for the appropriateness of its evaluations as the petitioning party, *Schaffer v. Weast*, 546 U.S. 49, 56-62; 126 S.Ct. 528 (2005); *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). Additionally, under Illinois law, the District must provide evidence that it has appropriately identified the Student’s educational needs and that the special education and related services are adequate, appropriate, and available, however this does not shift the burden of proof to the District, *Kerry M. v. Manhattan Sch. Dist. #14*, 106 LRP 5847 (N.D. IL. 2006); 105 ILCS § 14-8.02a(g).

IX. FINDINGS OF FACT:

This Hearing Officer did not have the benefit of a transcript with respect to the testimony heard when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes, recording of the hearing, and recollection. This Hearing Officer carefully considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether or not specifically referred to or cited when making this final determination. After considering all the evidence, as well as the arguments of both District's counsel and Petitioner's Parent, this Hearing Officer's Findings of Fact are as follows:

1. Prior to high school [REDACTED] was a student at the [REDACTED] ("TLC"). TLC is a public school program located in [REDACTED], Illinois and operated by the [REDACTED] [REDACTED] (" [REDACTED] ") which is a special education cooperative associated with the District, (Test. ST; TR; IHO 1).

2. TLC's programming is designed to provide special education services to students presenting with significant behavioral and/or emotional disorders. The design of the TLC program is to teach students functional behavioral skills to effectively manage their behavioral or emotional difficulties with a goal of transitioning the student back to that student's home school to be reintegrated into a general education setting or other less restrictive teaching environment. The TLC program provides for a highly structured, small classroom, self-contained teaching environment, (Test TR).

3. During his final year at TLC, [REDACTED] achieved both his academic and behavior goals such that it was determined [REDACTED] was ready to transition back to his home school, which is what [REDACTED] had requested, (Test. ST; TR, R-1).

4. Following an IEP meeting held March 24, 2016, ██████'s placement was changed from the TLC program to ██████'s "ED Transition Program," ("Transition Program"), which was located at the ██████ High School, (Test. ST; AT; IHO 1; R-4).

5. ██████'s Transition Program is designed to be an intermediate program to facilitate the transition of emotional or behavior disordered special education students from the more restrictive TLC program to a less restrictive self-contained special education setting at ██████'s High School. Students in the Transition Program remain in the program until it is determined they can be safely mainstreamed to one or more of the school's general education classes. (Test. SH³, TR⁴, TD⁵, RL⁶).

6. The Transition Program at ██████, by design, mirrors many of the features of the TLC program structure to facilitate student integration from the TLC program into ██████'s Transition Program. Both programs are highly structured and offer small self-contained classroom settings with special education instruction by qualified special education teachers, along with paraprofessional support and dedicated related services including social worker staffing. Both employ a behavior modification milieu utilizing positive reinforcement to motivate students in meeting defined goals designed to modify problematic behaviors with an overriding

³ SH has been employed with ██████ for 11 years and as a special education teacher in its Transition Program for the past 8 years. In 2001 she received a certification from the State Board of Education to teach learning disorder student. She has had a special education teaching license from the State of Illinois (LB1-learning behavior specialist) since 2004.

⁴ TR has been employed with the Eastern Illinois Area of Special Education as its Executive Director for the past 9 years. He has a bachelor's degree in special education, a master's degree and specialist degree in educational leadership all from Eastern Illinois University. He holds both special education and superintendent licenses.

⁵ TD has been employed by ██████ for the past 30 years. He is currently ██████'s High School Principal. He has had a teaching license issued by the State of Illinois since 1983 and holds a licensure from the State of Illinois in school administration since 2000 or 2001.

⁶ RL has been employed with ██████ as its special education coordinator for about a year. He had taught special education in the District's middle school for about 20 years. He has a bachelor of science in special education (received in 1999) and a master's degree in educational administration (received in 2000). He holds current licensures from the State of Illinois in both special education and educational administration.

goal to enable the student to be mainstreamed into a general education environment, (Test. BL⁷;TR; RL).

7. ██████ was placed in the ██████ Transition Program to address a chronic history of physically aggressive behaviors directed toward both peers and school staff which resulted in the District's concerns for the safety ██████, school peers and the school staff, (Test. RL; R3; R7; R16; R27; R34; R35; R42).

8. At the time ██████ began attending the ██████ Transition Program, ██████ received passing grades in all subjects, and was shown to be otherwise progressing toward meeting the goals established for him in the program, (Test. AT; R-2).

9. ██████ experienced the ██████ Transition Program as restrictive, punitive and designed primarily to discipline unacceptable behaviors rather than to foster educational growth and development, (Test. ST; AT).

10. ██████ continued in the District's Transition Program during the 2016-2017 academic school year until September 2, 2016. At that time ██████'s Parent, at ██████'s request, revoked consent for ██████ to receive further special education services. ██████ parent, ██████, in a handwritten letter to the District requested that all services provided under ██████'s IEP be "dropped effective immediately." ██████ believed he could achieve greater educational success in a less restrictive environment by being taught in a general education setting along with his peers, (Test. AT; ST; R-9; IHO 1).

⁷ BL has been employed with ██████ as a school social worker for the past 7 years. She was employed at the Treatment Learning Center, ██████, Illinois for 19 years prior to that time. She has both a bachelor's and master's degree in social work from the University of Illinois and has had a Type 73 certification issued by the Illinois State Board of Education since 1993.

11. Following the revocation of consent for special education services the District discontinued ██████'s special education and related services and transferred ██████ into the High School's general education curriculum, (Test AT, ST, TD).

12. Following ██████'s return to the general education setting, ██████ became overwhelmed with coursework, often did not attend his classes, failed to complete homework assignments, experienced significant difficulties in social interactions with peers resulting in the display of aggressive behaviors and a number of out-of-school suspensions⁸. ██████ ultimately received failing grades in all of his courses in the general education setting, (R10-1, R10, R17, R6).

13. In late October, 2016, ██████ delivered a handwritten letter to the District noting ██████'s struggles due to his "learning disability" and requested the District to reinstate special education services for ██████ (Test. AT, R-15, R-17).

14. On November 8, 2016, ██████ signed consents for the District to evaluate ██████ to determine his eligibility for special education services and met with the District for a domain meeting at which time it was agreed additional evaluative assessments would be conducted to assess ██████ in the areas of Academic Achievement, Functional Performance, and Social-Emotional Status, (Test. AT, R-19, R-21, R-22).

15. Following completion of the evaluation, an IEP meeting was held on December 15, 2016. The IEP team documented ██████'s Academic Achievement showing weakness in math and writing skills and comparatively stronger reading skills. The team noted ██████'s Functional Performance is greatly impacted by his Attention Deficit Hyperactivity Disorder (ADHD) resulting in clinically significant attention issues in staying on task in class and in completing homework assignments. Also noted is ██████'s low average or borderline

⁸ Suspensions occurred on 09/01/16, 10/24/16, 10/27/16, (R-24).

intellectual functioning based upon the WISC-IV Full Scale IQ measure⁹. Deficits in attention and concentration are also reported. The notes of the IEP meeting also indicate that in addition to ██████'s ADHD diagnoses, he is also diagnosed with Oppositional Defiant Disorder (ODD). Also noted was reference to ██████'s significant discipline history involving aggressive behavior, gross misconduct, and school suspensions. The team determined ██████ eligible for special education services under both Emotional Disability (ED) and Other Health Impairment (OHI) classifications and recommended ██████ return to the District's Transition Program to receive special education and related services, which was consented to by the Parent. A Behavioral Intervention Plan (BIP) was formulated to be implemented as part of his IEP, (R24, IHO 1).

16. ██████ remained in the Transition Program for the remainder of the 2016-2017 school year. During the second semester of the 2016-2017 school year ██████'s behaviors became problematic and he stopped attending classes¹⁰. In October of 2017, Angie T. contacted the District requesting a review of ██████'s IEP, (Test. AT, ST).

17. An IEP meeting was held October 19, 2017 at which time ██████ who was now making educational decisions for ██████ (now 18 years old) under a Delegation of Rights authority (R45), requested the District to reevaluate ██████ to determine whether he would be eligible for special education services under a Specific Learning Disability (SLD) classification. The District agreed to reevaluate ██████ to rule-out SLD. At the meeting ██████ reported that ██████ no longer suffered from ADHD as she believed his ADHD was in "remission," and therefore requested the District not to consider ADHD in their reevaluation of ██████. She

⁹ ██████'s IQ may be greater than the reported WISC-IV score due to attention issues ██████ experienced during test administration.

¹⁰ ██████ had been absent seventy-three (73) school days during the 2017-2018 school year, (IHO 1).

also reported [REDACTED] was no longer taking prescribed medication to treat his ADHD due to side effects, at her direction, (Test. AT, R47, IHO 1).

18. A domain meeting was held and it was agreed the District's reevaluation would include completing a Psychological Evaluation along with administration of the BASC 3 and Vineline-3 assessments as part of a Social Development Study evaluation, (Test. KB¹¹, R48, R49, R50).

19. On December 6, 2017, Parents were notified by the District of the scheduling of an IEP team meeting for December 13, 2017 to review the results of the reevaluation, review [REDACTED]'s IEP and placement, consider post-secondary goals and transition services and to review [REDACTED]'s BIP. The date was chosen by agreement between the District and [REDACTED], (Test. AT, R51).

20. On December 13, 2017, the IEP team convened. In attendance at the meeting were [REDACTED], his teachers [REDACTED] and [REDACTED], [REDACTED] - Special Ed. Coordinator, [REDACTED] - Special Ed. Consultant, [REDACTED] - Executive Director [REDACTED], [REDACTED] - school Principal, [REDACTED] - school social worker and [REDACTED] the school psychologist. Neither of [REDACTED]'s parents attended this IEP, (R 53). [REDACTED] did not attend because she had an appointment for an "intake interview" with a civil rights attorney, that day, (Test. AT).

21. [REDACTED] drove [REDACTED] to the IEP meeting. At the time [REDACTED] was being dropped off his mother told him if you can handle the IEP meeting go ahead with the meeting otherwise request a new meeting date, (Test. ST, AT).

¹¹ KB has been employed by [REDACTED] as a social worker for the past 14 years. She has a masters degree in social work with a school social work (Type 73 certification) received from the Illinois State Board of Education in 2005. she also holds a certification in therapeutic crisis intervention.

22. Because ██████ had previously delegated his educational decision making rights to his mother, the District contacted its legal counsel for direction on how to proceed with the IEP meeting. ██████ was informed the team could not proceed with the IEP meeting without his mother's written consent because he had given her the right to make educational decisions for him. He was also told the meeting could proceed if he chose to revoke the Delegation of Rights he had previously given his parents and was also told the meeting could be rescheduled for another date if he wanted. Before the start of the meeting, the District attempted to call ██████ to learn what she wanted to do. ██████'s attempt to call his mother for her input was also unsuccessful¹². ██████ decided to revoke his Delegation of Rights because he felt he could handle the IEP meeting himself and he did not want to delay moving forward with the meeting, (Test. ST, TD, SH, TR, R52, R53).

22. At the IEP meeting, the team reviewed ██████'s progress in the Transition Program at ██████ and noted he had not been meeting his goals primarily due to his poor class attendance noting he had missed 73 days of school during the school year. The team noted that when ██████ did attend his classes he was making progress toward meeting his goals. The IEP also reviewed the results of the reevaluation. RM¹³, who administered the Psychological evaluation reported the results of the Wechsler Adult Intelligence (WAIS-IV) assessment she administered as well as the Wechsler Individual Achievement Test (WIAT-III). ██████'s WAIS-IV Full Scale score was 74 which is in the Borderline Range. RM reviewed the subtest scores of the evaluation with ██████ and noted he had improved in his Working Memory since his last evaluation in 2014. RM noted ██████'s Processing Speed subtest score of 68 proved to

¹² ██████ returned ██████'s call during the meeting. She was informed ██████ was doing fine at the meeting and the meeting, which lasted about 4 hours, continued to conclusion.

¹³ RM has been employed by ██████ as a School Psychologist since 2001. She has both a bachelor's and master's degree in Psychology and holds a license issued by the State of Illinois as a School Psychologist since 1975.

be his weakest area which is in the Extremely Low Range. RM also reviewed the WIAT-III subtest scores with the team and noted all of the achievement subtest scores fell within the average or low-average range. During the meeting BL shared the results of her evaluation (Social Development Study). She administered the Behavioral Assessment System For Children-Third Edition (BASC-3), and the Vineland-3, an adaptive behavioral assessment. BL reported that the results showed that with few exceptions, all areas evaluated indicated a rating of “Clinically Significant” (high level of maladjustment) or “At-Risk” (may identify a significant problem). These areas of concern included attention problems, attitude toward teachers, self-reliance, anxiety, depression, somatization, locus of control, sense of inadequacy, ego strength and adaptability, (Test. RM, BL, R49, R50, R53).

23. Following the review of the evaluation, the team discussed with ██████ eligibility for special education services. RM discussed the five areas and criteria for an Emotional Disability (ED) classification with the team. The team agreed that ██████ would continue to qualify for the ED classification. The team then considered whether or not ██████ would qualify for special education services under an Other Health Impairment classification (OHI). The team considered recent information provided by ██████ that ██████ has been diagnosed with Impulse Disorder and Depression. After the team discussed the criteria for OHI, the team agreed that ██████ would continue to qualify for an OHI eligibility classification. The team then considered whether or not ██████ would qualify for a Specific Learning Disability (SLD) classification which is a classification both ██████ and ██████ had requested. The team then discussed the criteria for a Specific Learning Disorder classification as defined under IDEA. RM stated the testing shows ██████’s achievement scores fall within an average range and that his learning difficulties resulted primarily from emotional difficulties.

The team then decided an SLD classification would not be appropriate, over ██████'s objection¹⁴, (Test. RM, RL, R53, IHO 1).

24. The IEP team then discussed formulating ██████'s IEP. The team considered the evaluative information, ██████'s most recent level of functioning and performance in the Transition Program, the progress he was making when he attended the Transition Program, ██████'s desire to graduate from High School on time and discussed ██████'s post-graduation pursuits which are vocational in nature. The team also considered the Functional Behavioral Analysis (FBA) and BIP previously formulated for ██████. Goals were discussed and an IEP was then formalized and offered which for the most part adopted the goals and placement set forth in ██████'s prior IEP. The team felt that since ██████ had been making progress and was successful under his former IEP and placement, there was no need for any substantial change, and recommended the ██████ Transition Program with the possibility of mainstreaming when ██████ achieved his behavioral goals, (Test. RL, RM, KB, TD, IHO 1).

25. The proposed IEP and placement was not acceptable to the Petitioner and on December 20, 2017, ██████ served his DPCN. ██████ has not attended ██████ High School since the December 13, 2017 IEP meeting, (R53, IHO 1). He has been participating in the Lake Land College's Pathways to the Future program located in Mattoon, Illinois to obtain a GED (General Education Diploma), (Test. ST, AT).

¹⁴ Those members of the IEP who testified at the Hearing each reported ██████ was a very active participant in the IEP meeting. He asked questions about the details of the evaluation data, inquired about how the results compared to how he previously tested, expressed his views on desiring to graduate on time and what he believed would be a proper placement for him to receive services. He also contributed in the discussion concerning future transition planning, and he challenged the team's recommendation that an SLD classification for him was not appropriate and wrote a dissenting letter (Test. ST, R53).

X. CONCLUSIONS OF LAW:

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

I. DID THE DISTRICT FAIL TO PROVIDE STUDENT A FREE APPROPRIATE PUBLIC EDUCATION (FAPE) BY FAILING TO ALLOW THE PARENT AND/OR STUDENT THE OPPORTUNITY TO PARTICIPATE MEANINGFULLY IN THE CREATION OF STUDENT'S INDIVIDUALIZED EDUCATION PROGRAM (IEP) INCLUDING THE DETERMINATION OF STUDENT'S PLACEMENT?

26. As a matter of law, IDEA provides the District must ensure the IEP team includes the parents, 34 CFR 300.321(a)(1). The District "must take steps to ensure that one or both of the parents are present at each IEP team meeting or are afforded the opportunity to participate, including (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at mutually agreed on time and place," 34 CFR 300.322(a)(1) and (a)(2). "A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend," 34 CFR 300.322(d).

27. At the Hearing, the testimony reveals [REDACTED] scheduled the December 13, 2017 IEP meeting by agreement with the District. She received formal written notification from the District confirming the date of the meeting. She drove [REDACTED] to the meeting and discussed with [REDACTED] proceeding with the IEP meeting without her if he could handle it and if not to make a request to reschedule the meeting. When [REDACTED] informed the team his mother was not attending, the District attempted to call her to confirm how she wanted to proceed. [REDACTED] chose not to attend the IEP because she had scheduled an "intake interview" with a civil rights attorney. At no time before the meeting date did [REDACTED] contact the District to request the meeting to be rescheduled.

28. Given these uncontroverted facts ██████ has no basis to now complain that she was not provided an opportunity to participate in the IEP meeting simply because, despite notice of the meeting, an and opportunity to attend the meeting, she chose not to attend.

29. Further, the facts as reported by both ██████¹⁵ and the members of the IEP team who testified at the hearing supports this IHO's conclusion that ██████ did, in fact, participate in the IEP meeting in a meaningful manner.

30. The testimony indicated that before the meeting began, the team explained ██████'s rights and options of proceeding with the meeting without his parent present which also included the option of resetting the meeting for another date. ██████ proceeded with the meeting and engaged the team members with questions concerning the evaluation, how the evaluation results compared to prior testing results, participated in the discussion of his eligibility for special education services and why the team members arrived at the eligibility classifications they did, why a SLD classification was not appropriate. He shared his thoughts and preferences for the placement where his programming would be implemented and he discussed his strong desire to graduate on time and what his plans were post-graduation. The team, with ██████'s input formulated an IEP which considered ██████'s desire not to be in a restrictive educational environment and his desire to graduate on time and included transition planning incorporating ██████'s input on his post-graduation plans. The effort the team and ██████ made in formulating the IEP was considerable as the IEP meeting lasted about 4 hours.

31. Based upon the foregoing, this IHO finds the Parent's claim that she was not provided an opportunity to participate in the 12/13/17 IEP is unsupported as she was provided an opportunity to participate in the IEP meeting but chose not to participate. Further, based upon

¹⁵ ██████ presented at the Hearing as an assertive and informed. He, clearly understood the questions asked of him and he was able to draw on his history, articulate clear responses and advocate on his own behalf.

the evidence, this IHO finds ██████ did, in fact, participate in a meaningful manner in the formulation of his IEP.

II. DID THE DISTRICT DENY ██████ A FAPE BY FAILING TO PROVIDE HIM AN IEP REASONABLY CALCULATED TO ENABLE HIM TO MAKE EDUCATIONAL PROGRESS APPROPRIATE IN LIGHT OF HIS CIRCUMSTANCES?

32. To determine whether the District has provided ██████ a FAPE substantively, it must be determined whether the District meets the standard set forth by the United States Supreme Court which is whether the District offered “an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances,” *Andrew F. –v- Douglas County. School Distist RE-1*, 137 S.Ct. 988, 69 IDELR 174 (March, 2017).

33. Under the *Andrew* standard, an examination of ██████’s present levels of academic and functional performance is important to consider in order to understand ██████’s “circumstances” at the time the IEP was prepared.

34. ██████’s Present Level of Academic Achievement as reported in his 12/13/17 IEP and confirmed by the witness testimony indicates ██████ has “great difficulty” staying on task in the classroom setting. He is noted to have had extreme difficulty in a mainstream classroom setting due to the higher pace and expectations of the regular education setting. His MAP score (which is a measure of academic progress) shows low average ability as did his recent WIAT-III evaluation results. It is further noted, when placed a highly structured small classroom setting ██████ has maintained passing grades, on grade level, in all classes. In contrast, when ██████ revoked consent for special education services and was returned to a less structured general education setting, he failed each of his classes. In class, he requires constant reminders of what homework is due, what page the homework assignment is on, and what task he is to be working on.

35. ██████'s Present Levels of Functional Performance, which is also set forth in his IEP and validated by the testimony of the witnesses, notes that during the time ██████ participated in the Transition Program (since his freshman year), he has shown steady improvement with controlling inappropriate behaviors. In contrast, when in a general education setting, his behavior was not acceptable. He is noted to have difficulties following classroom rules, often refuses to follow staff directions, argues with staff in a disrespectful manner. He is noted to be impulsive and when frustrated becomes physically aggressive towards others and himself (fighting with peers, throwing or destroying school supplies, pounding on the desk, hitting his head on hard surfaces and cussing at school staff). It is noted that for the prior school year, ██████ had 18 discipline referrals, 10 of which resulted in out-of-school suspensions.

**A. IS THE ██████ TRANSITION PROGRAM
AN APPROPRIATE PLACEMENT?:**

36. In considering ██████'s grades over the past several years, the facts show the more restrictive the placement, the better ██████ has performed both academically and behaviorally. When attending the TLC program, ██████ grades were all A's and B's. When attending the Transition Program his grades in all subjects were passing. When attending a general education setting at ██████ his grades were all failing. This also proved true with respect to ██████'s behaviors wherein his behavior difficulties worsen as he moved from a highly structured placement, (which required ██████ to account for his behaviors on a daily basis), to a less restrictive teaching environment.

37. In understanding further the reasons why ██████ appears to perform better in a more restrictive educational setting, the District's witnesses are of the opinion the self-contained smaller classroom size provides special education supports and services which specifically target ██████'s behaviors and his related emotional difficulties. It provides additional resources to

help ██████ stay on task, complete tasks and provides him related services immediately available to tend to ██████ in times of crisis. Further, the District witnesses are of the opinion a general education setting is not appropriate at this time because of safety concerns resulting from ██████'s periodic aggression and acting out behaviors.

38. As a matter of law, the District is not required to place a student in a regular classroom setting when the student threatens the safety of other students or poses a danger to himself, *Clyde K. -v- Puyallup School Dist. 21*, 21 IDELR 664 (9th cir. 1994) or where the student engages in significantly disruptive behavior that interferes with the education of classmates, *School Board of Independent School District No. 11, Anoka-Hennepin -v- Renollett*, 45 IDELR 117 (8th cir. 2006).

39. Given ██████'s present levels of academic and functional performance, the supports he needs to him keep him on task and to complete assignments, the disruptive conduct he has shown in class in the past, and the safety concerns resulting from his acting out behaviors directed toward staff, peers, and himself, this IHO agrees with the District's witnesses who are of the opinion the Transition Program at ██████ is an appropriate placement for ██████ in order for him to make educational progress and to provide him mainstreaming opportunity when he has shown his behaviors are under control.

**B. HAS THE DISTRICT DENIED ██████ A FAPE
FOR FAILING TO FIND HIM ELIGIBLE FOR SPECIAL EDUCATION SERVICES
UNDER A SPECIFIC LEARNING ORDER (SLD) CLASSIFICATION:**

40. Initially it should be understood this IHO remains puzzled why this issue has been advanced by the Petitioner. No evidence was offered by the Petitioner to explain how or why a SLD classification would change the special education services, related services or placement being offered to ██████ or how a FAPE was denied by not classifying ██████ SLD.

41. The evidence shows the Petitioner agrees with the District's classification of ██████ as being eligible for special education and related services under both an Emotional Disability and Other Health Impairment classification which was determined following ██████'s most recent evaluation. The District, based upon its most recent evaluation of ██████, ruled-out an SLD eligibility classification¹⁶.

42. The Petitioner offered no credible evidence¹⁷ at hearing to support the contention ██████ suffers from a Specific Learning Disability other than the lay opinion of AT¹⁸.

43. IDEA defines Specific learning disability as:

“ a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations...,” 34 CFR 300.8(c)(10)(i).

44. IDEA also provides:

“Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or...,” (emphasis added), 34 CFR 300.8(c)(10)(ii).

45. Because the evidence at hearing shows ██████'s difficulties result primarily from emotional difficulties and because no credible evidence was offered by the Petitioner to show

¹⁶ Each of the District's witnesses who formed a part of the IEP team (including those who conducted the evaluations) presented as credible and competent witnesses possessing the education background, work experience and knowledge of ██████ to support the opinions each provided at hearing.

¹⁷ Petitioner offered into evidence page 1 of 6 of a Discharge Summary dated 03/02/2017 from ██████ Behavior Center which states as ██████'s primary diagnosis “Disruptive mood deregulation disorder” and a Secondary diagnosis of “Unspecified disruptive impulse-control, and conduct disorder “ all of which is consistent with the District's evaluation results. On this document Parent hand-wrote “Learning Disability, Bipolar./depression/Anxiety.” Parent testified those notations came as result of what ██████'s doctors had told her. None of ██████'s doctors appeared to testify at the hearing and accordingly were not available to be examined as to any factual basis underlying any opinion whether or not ██████ suffers from any Specific Learning Disorder. Therefore, this IHO assigns little if any weight to the portion of the Parent's testimony relating to ██████ having been diagnosed with a SLD, (P-15, AT).

¹⁸ AT has no formal medical, psychiatric or psychological education or experience in the assessment or diagnosis of Specific Learning Disabilities. In 2004, AT received certification as a Certified Nursing Assistant (CNA) from Lake Land College and worked as a CNA at a nursing home for about 10 years. She has not been employed in the medical field since that time.

otherwise, this IHO finds the District did not deny ██████ a FAPE by not finding him eligible for special education services under a SLD classification.

III. WAS ██████ DENIED A FAPE BY THE DISTRICT'S FAILURE TO PROPERLY IMPLEMENT STUDENT'S DECEMBER 13, 2017 IEP BY PROVIDING STUDENT A 12TH GRADE CLASS SCHEDULE INCONSISTENT WITH WHAT IS PROVIDED FOR IN HIS DECEMBER 13, 2017 IEP?

46. ██████'s 12/15/16 IEP sets forth a written anticipated Course Of Study for his Junior year which provides for him to take certain core courses required for graduation namely English 3 and Math 3, (R24). ██████'s 12/13/17 IEP also sets forth a written anticipated Course Of Study required for his graduation including English 4.

47. The Petitioner now complains that the Course Of Study set forth in his 12/13/17 IEP was not following thereby resulting in a denial of a FAPE.

48. Testimony at hearing revealed that because the Petitioner revoked consent to receive special education services and was transferred to a general education setting which ultimately resulted in him failing all general education classes, (including core courses required for graduation), he was required to retake those courses in order to receive course credits necessary for graduation, (Test. ST, RL).

49. ██████'s class schedule in 2017 which included retaking those classes he had failed, while a deviation from the courses he was anticipated to take under his 12/13/17 IEP, does not constitute a denial of a FAPE.

50. While technically the District should have followed IDEA's procedural safeguards by given notice to the Petitioner to hold an IEP meeting or obtain Petitioner's consent to the change in the Course Of Study section of his 12/13/17 IEP , to reflect the course work ██████ was required to retake, its failure to do is a harmless error.

51. Initially, it should be noted [REDACTED]'s 12/13/17 IEP was never implemented following Petitioner request for a Due Process hearing due to the "Stay Put" provisions of IDEA being invoked, (see 34 CFR 300.518). Therefore, Petitioner's claim the 12/13/17 IEP was not being followed by the District is simply an implausible argument.

52. Furthermore, for a technical procedural violation of IDEA to rise to the level of a denial of a FAPE, there must be some showing that the technical violation actually interfered with [REDACTED] receiving a FAPE, *DiBuo –v- Bd. Of Educ. Of Worcester County*, 309 F.3d 184, 190 (4th Cir. 2002), and a showing the violation resulted in the loss of an educational opportunity for him, *M.M. ex rel. D.M. –v- Sch Dist. Of Greenville County*, 303 F.3d 523, 533 (4th Cir. 2002); *Schroll v. Bd. of Educ. Champaign Cmty. Unit Sch. Dist. #4*, 48 IDELR 155, 107 LRP 49410 (C.D. Ill. 2007) ; 20 U.S.C. § 1415 (f)(3)(E)(ii).

53. In this case, the change in [REDACTED]'s class schedule (done to allow [REDACTED] to retake courses he failed and which were required courses to be taken for him to receive necessary credits for graduation) did not result in the loss of educational opportunity for him and does not, therefore, result in a denial of a FAPE

XI. ORDER:

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

Based upon the above, this IHO finds, the District has appropriately evaluated and identified [REDACTED]'s educational needs and that the special education, the related services, and the placement offered by the District is adequate, appropriate, and available, and based upon this IHO's findings that the District has not denied [REDACTED] a Free Appropriate Public Education, each of the Petitioner's claims and the relief Petitioner has requested, are denied.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

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

NOTICE OF RIGHT TO APPEAL

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

Dated: November 5, 2018



Hearing Officer

Alan G. Schuster,
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Highland Park, IL 60035
Phone: (847) 266-1830
Fax: (847) 266-1835
[Email: LawOfficeAlanSchuster@gmail.com](mailto:LawOfficeAlanSchuster@gmail.com)

APPENDIX A

██████████ -v ██████████ Community High School District ██████████
Case No: 2018-0219

██████████	██████████ -Student
██████████	██████████ -Mother
██████████	██████████ - Brother

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

[REDACTED], by and through)	
his parent, [REDACTED],)	
Petitioners,)	
)	Case No. 2018-0219
- v -)	
)	
[REDACTED] CUSD [REDACTED],)	Alan G. Schuster
)	Hearing Officer
Respondent.)	

CERTIFICATE OF SERVICE

I, Alan G. Schuster, certify that on November 5, 2018, a copy of my Decision And Order was served upon the following persons in the manner indicated:

Sent via Email and Certified Mail

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

Sent via Email and Certified Mail

Mr. Brandon Wright, Esq.
Miller, Tracy, Braun, Funk & Miller, Ltd.
[REDACTED]
[REDACTED]
[REDACTED]

Sent via Email Only

Illinois State Board Of Education


Andrew Eulass
aeulass@isbe.net

Wanda Schoneweis
wschonew@isbe.net

Dated: November 5, 2018

Alan G. Schuster

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


[REDACTED]
Hearing Officer