

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

STUDENT¹,

Student,

Case No: 2018-0277

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

██████████ School District ██████,

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 14-year-old, female who is a ninth grade student in the District high school commencing in the 2018-2019 school year. She qualifies for special education services under the disability categories of autism (O) and other health impairment (OHI), pursuant to eligibility and IEP meetings held on December 1, 2015, November 15, 2016, November 6, 2017, and May 14, 2018. The Student was found to have educational needs in the areas of: reading, math, speech/language, occupational therapy, physical therapy. The Student is currently enrolled in the general education setting for Freshman Physics, Math, JV Band, Physical Education,

¹ Personal identification information is provided in Appendix A.

Civics and Computer Processing with supplementary aides and services. She receives pull out special education services in English and PEAK/Support Service. The Student is also supported by the assistance of a full-time paraprofessional aide. Parents disagreed with the following: (1) the Emergency Care Plan provided in the Student's IEPs covering the period from February 15, 2016 to February 15, 2018; (2) the paraprofessional support received by the Student in the IEPs covering the same period; (3) the District's lack of modifications to the Student's reading and math curriculum over the period February 15, 2016 to February 15, 2018; and (4) the District's decisions not to provide Extended School Year (ESY) services for summer 2016 and summer 2017 and the District's decision to provide ESY services for summer 2018 at two potential locations not acceptable to Parents.

The Parents filed a due process hearing request on February 15, 2018. (IHO #1.) Parents' initial due process complaint notice was lengthy and this Hearing Officer was unable to determine the specific issues raised by Parents for hearing. Therefore, Parents were granted leave to file an Amended Due Process Complaint Notice which specifically identified the issues for hearing (pursuant to the IDEA), the timeframe in which said issues arose, and the specific remedy requested for the alleged FAPE denials by no later than April 16th at 5:00 p.m. (IHO #13.)

The parties participated in a resolution session on March 2, 2018. However, they were unable to resolve any of the outstanding issues. (IHO #6.)

Parents timely filed a six page document on April 16th. The District filed a Motion to Dismiss alleging that Parents' amended request did not comply with the mandated requirements for due process complaints pursuant to 34 C.F.R. §300.508 and 105 ILCS 5/14-8.02a(f). (IHO #15.) After review of Parents' amended request during a status conference, this Hearing Officer

was unable to identify the issues, the specific timeframe pertaining thereto, and the requested remedies for said issues. However, this Hearing Officer declined to dismiss Parents' request and provided Parents with an additional opportunity to prepare and file an amended due process complaint notice of not more than three (3) pages in length which specifically identifies the issues for hearing (pursuant to the IDEA), the timeframe in which said issues arose, and the specific remedy requested for the alleged FAPE denials. (IHO #18.)

After careful review of Parents' second Amended DPCN, timely filed on May 7, 2018, this Hearing Office was able to identify several issues for hearing. (IHO #19.) Parents' second Amended DPCN was accepted to the extent that it raised the issues below pursuant to this Hearing Officer's order dated May 29, 2018 and the 45-day timeline was reset to July 23, 2018. (IHO #31.)

The Parties jointly requested continuances of the 45-day deadline on the following dates: April 5², May 14³, May 29⁴, July 13⁵, and September 28⁶, 2018 in order to allow Parents time to file amended due process complaint notices, the parties an opportunity to continue settlement discussions, and to allow this Hearing Officer ten days (10) to issue her Final Determination and Order after the conclusion of the hearing. The requested continuances were granted for good cause shown pursuant to this Hearing Officer's orders dated April 8, May 21, June 10, July 21, and October 5, 2018. (IHO #11, 23, 31, 38, 47.)

The Prehearing Conference was completed on September 11th. The Due Process Hearing dates were set by agreement for September 25-26, 2018. (IHO #42.)

² IHO #11.

³ IHO #23.

⁴ IHO #31.

⁵ IHO #38.

⁶ IHO #47.

The five-day disclosure date was set by agreement for no later than 9:00 a.m. on September 18th. Parents did not tender their final documents, document list and witness list by that deadline. A status conference call was held on September 19th and Parents lack of disclosure was discussed at that time. As a result of the discussion, the District agreed to waive the five day disclosure rule if Parents could provide their final documents, document list, and witness list to the District office by 10:30 a.m. on September 20th. This Hearing Officer agreed that Parents could provide her copy of the documents and document and witness list to the District administrative office at that time as well. Parents provided their documents on September 20th as agreed. Parents final document list was provided to District counsel and this Hearing Officer via fax on September 21st. However, a final witness list and the Parents requested compensatory education package, per the Prehearing Report & Order, were not provided. At the September 19th status conference, the Parents non-compliance with the five day disclosure rule and the consequences thereof was discussed at length. This Hearing Officer provided Parents with several opportunities to request a continuance of the due process hearing. Parents twice confirmed their desire to proceed to hearing on September 25th. Parents indicated that they understood that they would be unable to call any witnesses not disclosed on their September 9th Prehearing Witness List and agreed to same. Parents further stated that they would not provide any additional information related to their compensatory education request other than what was discussed at the Prehearing Conference and memorialized in this Hearing Officer's Prehearing Report & Order.⁷ (IHO #42.)

The Parent opted for a closed hearing. The Due Process Hearing was held as scheduled and completed on September 25, 2018. Ms. Frazier Satterley of Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP represented the District. Ms. [REDACTED] was the District

⁷ The IHO also noted the above on the record at the commencement of the Due Process Hearing.

Representative. The Parents were unrepresented by counsel. The parties presented joint witnesses.⁸ Parents presented one additional witness. The District presented the following Exhibits: District #2-7, 19-25, 35, 39, 40-46, 51, 53-54, which were admitted into evidence. The Parents presented the following Exhibit: Parent # 1 which was admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-47. Both parties submitted oral closing statements and any case law relied upon.

ISSUES

The issues raised by the Parent are as follows:

(a) Whether the Student's IEPs dated February 15, 2016 to February 15, 2018 provided an appropriate Emergency Care Plan and thus provided the Student FAPE.

Parents maintain that the District failed to provide an appropriate Emergency Care Plan for the Student in her February 15, 2016 to February 15, 2018 IEPs, thus denying her FAPE. The District maintains that, at all times, an appropriate Emergency Care Plan was provided to the Student.

Parents request that this Hearing Officer order an appropriate Emergency Care Plan to be provided for the Student in her IEP.

(b) Whether the Student received appropriate paraprofessional support as required by her February 15, 2016 to the present IEPs, specifically as follows: copies of notes, notification of tests two (2) days before administration of same, written lists of vocabulary words, assignments written in the Student's planner, and 1 to 1 paraprofessional support for PEAK/ABA, toileting, and to be next to the Student at all times during PE class.

Parents maintain that the District failed to provide appropriate paraprofessional support for the Student as required by her February 15, 2016 to the present IEPs, thus denying her FAPE. The District maintains that, at all times, appropriate paraprofessional support was provided to the Student.

Parents request that this Hearing Officer order the District to provide the Student with appropriate paraprofessional support, specifically as follows: copies of notes, notification of tests two (2) days before administration of same, written lists of vocabulary words, assignments written in the Student's planner, and 1 to 1 paraprofessional support for toileting, PEAK/ABA, and to be next to the Student at all times during PE class.

⁸ Witnesses are listed in Exhibit A.

(c) Whether the District failed to modify the Student's reading and math curriculum to meet her educational needs, given her disability, from February 15, 2016 to the present, thus denying her FAPE.

Parents maintain that the District failed to modify the Student's reading and math curriculum to meet her educational needs, given her disability, from February 15, 2016 to the present, thus denying her FAPE. The District maintains that, at all times, the Student's reading and math curriculum was appropriately modified to meet her unique educational needs given her disability.

Parents request that this Hearing Officer order the District to provide the Student with appropriately modified reading and math curriculum, specifically modified as follows: large print materials, visual supports (i.e. visuals as her reading level), charts for formulas, textbooks for reading and math, provide a word bank, allow the Student to provide verbal responses (instead of written), provide fewer questions on tests, in order to enable the Student to received FAPE. Additionally, the Parents request co-taught classes with modified curriculum. The Parents also request that this Hearing Officer order compensatory education in the academic areas of reading and math, specifically as follows: The Student shall have access to International Connections Academy online for reading and math courses. The approximate cost of which is \$6,880.00 for full access. Individual courses are \$225.00 each. Said access to be provided for each high school year until the Student reaches grade equivalent performance in reading and math.

(d) Whether the Student was not provided with Extended School Year (ESY) services in her February 15, 2016 to February 15, 2018 IEPs thus denying her FAPE.

Parents maintain that the District failed to provide the Student with ESY from February 15, 2016 to the present, thus denying her FAPE. The District maintains that, at all times, the Student has been provided FAPE. The District further maintains that, at times when ESY services have been provided, Parents have declined same.

Parents are seeking compensatory education in reading and math. The parties agree that the qualitative approach to compensatory education is to be applied by this Hearing Officer.

FINDINGS OF FACT

This Hearing Officer did not have a transcript for the September 25, 2018 testimony 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 her final

determination. After considering all the evidence, as well as the arguments of both District counsel and the Parent, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a 14-year old female who is currently a ninth grade Student at the District high school. She qualifies for special education services under the disability category of autism and other health impairment, pursuant to eligibility and IEP meetings held on December 1, 2015, November 15, 2016, November 6, 2017, and May 14, 2018. (SD #2-7; Testimony of Parents, PRIN⁹, PSY¹⁰, SN.)
2. The Student has received special education services and supports throughout her educational career. (Testimony of Parents, SN.)
3. Parents removed the Student from the District middle school on February 22, 2018 and she did not attend the District middle school for the remainder of the 2017-2018 school year. (SD #6-7; Testimony of LT¹¹, NR¹², PARA, PRIN.)
4. MOTHER home schooled the Student from the time of her removal until the commencement of the 2018-2019 school year when the Student was enrolled in the District high school. The District provided related services for the Student during that period. (Testimony of MOTHER.)

Emergency Care Plan

5. SN¹³ has worked with the Student in her capacity as the school nurse since the Student was three years old and enrolled in the District's preschool program. (Testimony of SN.)

⁹ PRIN is the Principal of the District middle school. He holds a Master's Degree in Educational Leadership and has been employed by the District for four years.

¹⁰ PSY is a licensed school psychologist.

¹¹ LT is a licensed special education teacher and has been so employed for the past 14 years.

¹² NR is the District special education coordinator.

¹³ SN is a Registered Nurse (RN). She is licensed by the Illinois State Board of Education as a school nurse and has worked in that capacity for twenty-four (24) years.

6. SN first became aware that the Student may experience seizures when the Student was in second or third grade. Parents allowed her to speak with the Student's neurologist at that time. The neurologist advised that the Student had been tested for seizures and a seizure disorder. However the testing was inconclusive. (Testimony of SN.)
7. From 2016 until the present, Parents have refused to provide consent for SN to speak directly to the Student's medical care providers. (Testimony of SN.)
8. At hearing, Parents did not dispute that they have refused to allow SN to speak directly with the Student's medical providers.
9. During the Summer of 2017, prior to the Student's 8th grade year, the Student underwent surgery to implant a port in her chest to allow use of an implantable loop recorder. Parents and District staff refer to this device as a "clicker." The purpose of the loop recorder is to record the Student's heart rhythms should she experience episodes of an erratic heartbeat. The Student may have a condition referred to as Long QT which causes erratic heart rhythms and can cause fainting and seizure episodes. The loop recorder records the Student's heart rhythms should she experience an episode of erratic rhythms. The recorded information is then transmitted by Parents to the Student's medical providers for further analysis. The loop recorder is not a device which provides any type of medical treatment or therapy to the Student, it simply records her heartbeat when it is activated. (Testimony of SN, AUNT, MOTHER; SD# 21.)
10. After the port was implanted, SN received information from Parents regarding the device and its use. (Testimony of SN; SD#21.)
11. In December 2017, as a result of a mediation agreement, SN was permitted by Parents to draft a list of questions for the Student's medical providers to clarify questions that the IEP team

had related to the Student's loop recorder and her current health needs. (Testimony of SN; SD #19-21, 46.)

12. Based upon the responses she received in January & May, 2018, SN drafted an Emergency Care Plan for the Student. (Testimony of SN; SD# 20-24.)

13. The draft Emergency Care Plan was provided to Parents. (Testimony of SN; SD #21.)

14. At hearing, Parents did not dispute that they received the draft Emergency Care Plan.

15. Parents provided no testimony or evidence at hearing regarding the specific areas of dispute in the draft Emergency Care Plan. (Testimony of MOTHER and FATHER.)

16. The District does not implement a medical health care plan without physician approval and sign off. (Testimony of SN.)

17. To date, the District has not received approval or any feedback related to the proposed Emergency Care Plan from the Student's treating physicians. (Testimony of SN; SD #22.)

18. SN would like to have a current care plan in place to provide step by step instructions to non-medical staff in the event a medical emergency did occur involving the Student. SN met with Parents during Summer 2018 to further discuss the proposed plan, clarify the information she had received, and to obtain additional information from Parents. However, she just recently learned that Parents did not agree to the draft Emergency Care Plan. (Testimony of SN; SD #22.)

19. The District is operating under the prior Emergency Care Plan. (Testimony of SN; SD # 23.)

20. SN, the Student's paraprofessionals and teaching staff have attended Autism Spectrum Disorder (ASD) and seizure training relative to the Student. SN has attended these trainings every year for the past 4-5 years. SN also provides training to staff regarding seizure disorders

and provides training to staff specific to the Student, the Student's seizures, and proper use and timing of use of the Student's loop recorder device. (Testimony of SN, NR, SPED1, PARA, SPED2; SD #25.)

21. SN was excused by Parents from the remainder of the November 6, 2017 IEP meeting. Prior to leaving the meeting, she asked all parties if there were any other issues that she needed to address before she left the meeting. Parents and other IEP team members agreed that there were no other issues requiring her input. She was excused from the meeting to attend to the medical needs of other students. (Testimony of SN; SD #4.)

22. AUNT is a Registered Nurse (RN) and works as an Emergency Room RN. She is not directly involved with the Student's medical diagnosis and treatment.

23. This Hearing Officer finds the testimony of SN to be credible and persuasive based upon SN's lengthy experience as a school nurse, her demeanor at hearing, and the detailed nature of the information and events to which she testified. Further, SN's testimony and the documentary evidence presented through her testimony at hearing was uncontroverted by Parents.

Paraprofessional Support

24. PARA¹⁴ was the Student's one on one paraprofessional aide during the 2016-2017 school year and during the 2017-2018 school year, until Parents voluntarily withdrew the Student from school on February 22, 2018. (Testimony of PARA, SPED1, PRIN, MOTHER.)

25. PARA was responsible for implementing the Student's accommodations and modifications contained within her IEPs. She received a printed copy of the accommodations and modifications for the Student at the beginning of each school year from the Student's special education teacher. (Testimony of PARA, SPED 1; SD #3-5, 54.)

¹⁴ PARA is a licensed paraprofessional aide in the State of Illinois through the Illinois State Board of Education. She has been employed by the District for four years as a substitute teacher and paraprofessional aide.

26. PARA was trained by SPED1 on PEAK. PEAK is an applied behavioral analysis that is designed to improve a Student's language skills. PEAK training provides benefits to student's with autism, including this Student. (Testimony of PARA, SPED1, SPED2, NR.)

27. PARA worked with the Student on PEAK twice weekly for approximately 20 minutes each time pursuant to the November 15, 2016 and November 6, 2017 IEPs. (Testimony of PARA; SD #3-5, 43-44.)

28. PARA did not work with the Student on PEAK assessments if the Student had tests to take or classwork to make up as she did not want the Student to fall behind in her academic classes. During weeks when the Student had tests or classwork to make up, PARA provided 20-30 minutes per week of PEAK assessments. (Testimony of PARA; SD #43-44.)

29. PARA provided the following during the 2016-2017 and 2017-2018 school years: printed notes for Student; vocabulary lists; reading of all tests in all classes; insured that the Student was seated at the front of the classroom; provided extra paper; communicated with the Student's teachers to ensure that assignments were being modified as required by the Student's IEPs; provided verbal prompts when needed; provided enlarged print for the Student when needed and would confirm with the Student that she could read the enlarged print materials; ensured that the Student did not take more than one test per day; recorded the Student's homework, tests and quizzes in the Student's planner daily; recorded the Student's eating and bathroom activities daily; recorded the Student's daily behaviors to be provided to Parents. (Testimony of PARA, SPED1, LT; SD #39-41.)

30. PARA noted upcoming tests in a separate notebook. (Testimony of PARA.)

31. LT, the Student's 8th grade literature teacher, did not provide advanced notice of tests to any of her Students. The Student was in a separate, special education literature classroom with

grade level content and a modified literature/reading curriculum. LT did not provide advanced notice of tests as she would review test materials in class with the Students prior to and on the day of the test. She would review test questions and answers with the Student and other students prior to administering the test. (Testimony of LT, PARA.)

32. PARA provided bathroom support to the Student which consisted of verbal prompts and visual inspection as per the requirements of the Student's November 6, 2017 IEP. If the Student required feminine hygiene products, PARA was responsible for ensuring that the Student had the necessary supplies. (Testimony of PARA; SD #5, 39-41.)

33. Prior to the November 6, 2017 IEP, the Student's bathroom support included use of the handicapped restrooms. (SD #3-4.)

34. PARA accompanied the Student to her adaptive Physical Education class and stood next to or close to the Student for the duration of the class. (Testimony of PARA.)

35. PARA received seizure and Autism Spectrum Disorder (ASD) training from the District prior to working with the Student and annually thereafter. (Testimony of PARA, SPED1, PRIN, SN; SD #25.)

36. PARA was familiar with the Student's implanted loop recorder and how and when to use it. SN instructed her on the device and its use. (Testimony of PARA, SN.)

37. The Student's paraprofessional aide for the 2015-2016 school years received PEAK training and worked with the Student on PEAK assessment modules. She also implemented the Student's required accommodations. (Testimony of SPED1, SPED2, PRIN.)

38. The Student's 2015-2016 paraprofessional aide documented her PEAK Assessment work with the Student and provided 40 minutes per week of PEAK services. (SD #42.)

39. PARA did not speak to or interact directly with Parents. She would provide written notes in the Student's planner and MOTHER would also provide notes in the planner. (Testimony of PARA.)

40. PARA's testimony was uncontroverted by Parents.

41. This Hearing Officer finds the testimony of PARA to be credible and persuasive. PARA was the Student's one on one paraprofessional aide for the 2016-2017 and 2017-2018 school years, until the Student was voluntarily withdrawn from the District by Parents. She accompanied the Student throughout each school day and kept detailed records in the Student's planner of daily homework, tests and quizzes. She kept separate detailed records regarding the Student's daily eating and bathroom activities and PEAK assessment module completion. This Hearing Officer found PARA to be candid in her testimony when she conceded that, on occasion, she could not provide the 40 minutes of weekly PEAK assessments due to tests or make up classwork which the Student needed to complete. Based upon her testimony, demeanor at hearing, candid responses, extensive daily interaction with the Student over almost two school years, and detailed records, this Hearing Officer finds PARA's testimony to be credible and persuasive.

42. Parents received PEAK training on the first two books of the PEAK program. They also received PEAK books 1 & 2. (Testimony of MOTHER, PRIN.)

43. The Student was making progress toward her IEP goals in the 2015-2016, 2016-2017, and 2017-2018 school years. (Testimony of SPED1, LT, NR; SD #3-6, 11, 12, 35.)

Modified Curriculum

44. The Student has deficits in reading comprehension and independent reading as a result of her disability. She is very intelligent and has very good verbal reasoning abilities. Processing speed is her weakest area. (Testimony of SPED1, LT, PSY.)
45. The Student received reading/literature/language arts in a pull out, self-contained special education classroom in a general education middle school during 6th, 7th, and 8th grade. The curriculum was grade level content modified to meet the Student's independent and instructional reading levels. (Testimony of SPED1, LT: SD #3-6.)
46. The Student had independent reading and reading comprehension goals in her 2016-2017 and 2017-2018 IEPs. (Testimony of SPED1, LT; SD # 3-6.)
47. SPED1 monitored the Student's progress toward her reading goals during her 7th grade year. The Student was able to make progress toward her goals with the assistance of the academic supports that she received. (Testimony of SPED1; SD #3.)
48. LT monitored the Student's progress toward her reading goals during her 8th grade year. She evaluated her based upon her STAR reading results and the instructional reading level reflected in those assessments. Based upon the STAR reading results, the Student was making progress toward her reading goals. (Testimony of LT; SD #4, 6, 51.)
49. The Student would work on her reading goals in the classroom with her special education teacher or one on one with her paraprofessional aide. (Testimony of SPED1, LT.)
50. The Student was provided with large print reading materials and her special education teacher or paraprofessional aide would confirm with the Student that she could read the enlarged materials. (Testimony of SPED1, LT, PARA.)

51. The Student was provided with fewer questions on tests or with tests which had several answers already completed. (Testimony of PARA, LT.)
52. The Student's paraprofessional aide would record her verbal responses to questions. (Testimony of PARA, LT.)
53. The Student performed better with group reading versus independent reading and would perform better with prompting and the assistance of a word bank. The Student was provided with vocabulary words in advance. (Testimony of SPED 1, PARA.)
54. The testimony of SPED1, LT, and PARA was uncontroverted by Parents at hearing.
55. The Student was in a general education math class. She did not have any math goals as math was not an area of concern and she was able to achieve average performance in a general education math class with supports. (Testimony of SPED1; SD #3-5.)
56. The Student was achieving passing grades in math with supports. (SPED1; SD #3-5, 35.)
57. Parents presented no evidence at hearing regarding how they believe the reading and math curriculum should have been modified. (Testimony of Mother, Father.)
58. This Hearing Officer finds the testimony of SPED1 and LT to be credible and persuasive. Their testimony at hearing was supported by the documentary evidence presented and was corroborated by the testimony of PARA and PRIN. Further, their respective testimony was uncontroverted by Parents.
59. Parents presented no evidence regarding their request for compensatory education in reading and math other than what was memorialized in this Hearing Officer's Prehearing Report & Order regarding their request for access to the online resource of International Connections Academy. (Testimony of Mother.)

60. The Student's Independent Reading Level (IRL) per her STAR reading assessment scores regressed from December 19, 2017 to August 22, 2018 from a 3.6 grade level to a 2.6 grade level. The Student was withdrawn from the District middle school on February 22, 2018 and Mother had been using International Connections Academy, at Parents own expense, with the Student at home until she entered the District high school in August 2018. (Testimony of NR, Mother; SD #51.) Just prior to being withdrawn from school, the Student read *Pippi Longstocking* in her special education literature class. The book was above her level at a 5.4 grade level. The Student really enjoyed the book, participated in class, and was successful. (Testimony of LT.)

Extended School Year (ESY)

61. The District considered ESY for the Student for Summer 2016 and Summer 2017 and determined that the Student did not qualify for ESY services. The Student was making appropriate progress toward her IEP goals and did not show more than normal regression over the summer months. (Testimony of NR, LT; SD #5, 51.)

62. As the Student had been withdrawn from a District school since February 22, 2018, the District offered Extended School Year (ESY) services to the Student in Summer 2018. The District offered to provide ESY services through the local special education cooperative or through a private therapeutic day school. Parents rejected this offer of ESY. (Testimony of NR, Mother.)

63. Parents rejection of ESY for Summer 2018 is uncontroverted by Parents. Parents did not provide any evidence at hearing regarding the reasons for the refusal of Summer 2018 ESY services other than the delivery site was not to their liking. (Testimony of Mother.)

64. Parents failed to provide any evidence to support their contention that the Student required ESY services during the time period in question.

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 first prong of *Burlington-Carter* requires that the hearing officer must determine whether a free and appropriate public education was made available to the child in a timely manner. 34 C.F.R. §300.148(c); *Burlington* at 359; *Carter* at 7. 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). In order to determine whether a school district has provided a FAPE requires the determination of whether the school district complied with the procedural and substantive requirements of IDEA. *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982). As recently clarified by the United States Supreme Court, under the Individuals with Disabilities Education Improvement Act ("IDEA"), a school satisfies its substantive obligation to provide a free appropriate public education by offering a child "an IEP reasonably calculated to enable a child to make progress in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.)

In the instant case, Parents do not allege any procedural violations of the IDEA. Therefore, the inquiry focuses on the District's substantive obligation. "An IEP is not a form

document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth. See *Andrew F.*, 137 S. Ct. 988, 999. The child's circumstances are described by such information and drive the educational planning.

Under IDEA, an IEP must include “(1) a statement of the child's present levels of academic and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum” and “(2)(i) [a] statement of measurable annual goals, including academic and functional goals designed to (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.” 34 C.F.R. 300.320(a). “[A]n IEP is reasonably calculated to confer educational benefit when it is ‘likely to produce progress, not regression or trivial educational advancement.’” *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7th Cir. 2004.) [T]he progress contemplated by the IEP must be appropriate in light of the child's circumstances. . . . The instruction offered must be ‘*pecially designed*’ to meet a child's ‘*unique needs*’ through an *individualized* education program.” *Andrew F.*, 137 S.Ct. 988. The testimony and documentary evidence presented at hearing illustrate the following.

Emergency Care Plan

Parents allege that the District denied FAPE from February 15, 2016 to present by failing to provide the Student with an appropriate Emergency Care Plan. The testimony and documentary evidence presented at hearing do not support Parents' claim and in fact illustrate the following. An Emergency Care Plan relates to a Student's medical condition(s) and medical diagnoses and must be approved and signed by a treating physician in order to be implemented. (FF #16.) SN has been working since Fall 2017 to complete an updated Emergency Care Plan

for this Student. (FF # 10-11.) The Emergency Care Plan relates to a medical condition that the Student may have, Long QT, the symptoms of which include erratic heart rhythms which may cause fainting spells or seizures. (FF #9.) Parents have thwarted SNs attempts to provide a current step by step care plan, for use by non-medical personnel, in the event of a medical emergency. (FF#8, 18.) As part of a mediation agreement reached in December 2017 between Parents and the District, SN was able to draft a list of questions to be forwarded to the Student's medical providers. SN promptly complied with the mediation agreement, issuing her list of questions in December 2017. (FF #11.) The responses to her questions were received in January 2018 and May 2018, from two separate medical providers. (FF #12.) Based upon the responses, SN provided a draft Emergency Care Plan to Parents. (FF #13-14.) During Summer 2018, SN met with Parents to review and finalize the Emergency Care Plan and provided same to Parents for physician signature and approval. (FF #18.) SN was not aware, until very recently, that Parents disputed the draft Emergency Care Plan. (FF #18, 23.) To date, the District has not received approval or any feedback from the Student's treating physicians relative to the proposed plan. (FF #17.)

At hearing Parents called AUNT who is a Registered Nurse to testify regarding the Emergency Care Plan. AUNT is a Registered Nurse (RN) and works as an Emergency Room RN. She is not directly involved with the Student's medical needs and treatment. (FF #22.) AUNT took issue with the portion of the Emergency Care Plan that indicated that school staff should call 911 if a seizure event lasted more than 5 minutes. However, this information was provided to SN directly from one of the Student's treating physicians in response to SN's written questions. (FF #12, 23.) Parents provided no other basis for their disagreement with the draft

Emergency Care Plan. (FF #14-15.) The District continues to operate under the last agreed upon Emergency Care Plan. (FF #19.)

Based upon the above, this Hearing Officer finds Parent's claims to be without merit. Other than the one area of dispute presented through the testimony of AUNT, Parents presented no other evidence to support their allegation that the District's draft Emergency Care Plan is inappropriate. Further, the draft Emergency Care Plan has not been implemented by the District due to Parents' refusal to allow SN to communicate directly with the Student's treating physicians and Parents' failure to provide the draft plan directly to the Student's treating medical providers for their review and signature. Parents simply cannot prove that the District failed to provide the Student with a Free Appropriate Public Education (FAPE) when they have repeatedly thwarted the District's attempts to do so. This Hearing Officer finds that, at all times in question, the District has provided the Student with an appropriate Emergency Care Plan.

Paraprofessional Support

Parents next allege that the District did not provide the Student with appropriate paraprofessional support from February 16, 2016 to the present as required by her IEPs, specifically as follows: copies of notes, notification of tests two (2) days before administration of same, written lists of vocabulary words, assignments written in the Student's planner, and 1 to 1 paraprofessional support for PEAK/ABA, toileting, and to be next to the Student at all times during her Physical Education class. The testimony at hearing reflected that for almost two complete school years, PARA diligently provided all of the Students required accommodations for the operative IEPs in the 2016-2017 and 2017-2018 school year, as did the Student's prior paraprofessional aide in the 2015-2016 school year. (FF # 24-41.) While Parents took issue with the fact that the PEAK assessment modules completed were not reflected in every daily planner

entry, there were additional supporting documents which reflected the paraprofessionals' weekly efforts. (FF #26-29.) Further, PARA conceded that she could not provide the exact number of required PEAK minutes absolutely every week, due to other classwork and tests which required the Student's participation. (FF# 28.) Based upon the testimony and the documentary evidence provided at hearing, this Hearing Officer finds this to be a slight deviation from the IEP accommodations which does not rise to the level of a FAPE denial.

While Parents allege that PARA did not provide appropriate toileting support due to one instance, of unknown date, in which the Student returned home from school soiled, no evidence beyond Parents' allegation was introduced at hearing to support this claim. Parents further allege that PARA did not provide appropriate support during the Student's Physical Education class as PARA was not next to the Student at all times. Again, the evidence introduced at hearing simply does not support this claim. (FF # 34, 40-41.)

While the Student was not always provided with two (2) day advance notice of tests, as LT reviewed tests with the Student and her classmates in class, immediately prior to administration of a test, this Hearing Officer finds that this deviation from the Student's accommodations does not give rise to a denial of FAPE. With respect to alleged substantive violations of the Student's IEP, "[t]he primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the IDEA to state and local educational agencies in cooperation with the parents or guardians of the child." *Rowley* at 207. Educators "have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents." *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290, 297. In the instant case, LT, as an educator had the discretion to provide the Student with the educational method most

suitable to her needs. The Student's progress toward her reading and literature IEP goals provides further support for LT's chosen methodology. (FF #31, 48.) This Hearing Officer finds that the lack of two (2) day notice of tests did not result in a denial of FAPE, as the Student was provided an opportunity to review for tests with her special education teacher and classmates immediately before administration of tests.

Modified Curriculum

Parents next allege that the District failed to modify the Student's reading and math curriculum to meet her educational needs, given her disability from February 15, 2016 to the present. Specifically, Parents allege that the curriculum was not modified as follows: large print materials, visual supports (i.e. visuals at her reading level), charts for formulas, textbooks for reading and math, provision of a word bank, allowing the Student to provide verbal responses (instead of written), and fewer questions on tests. The testimony and documentary evidence introduced at hearing do not support Parents' claims.

The standard to be applied to determine whether a Student's IEP provides a Student with FAPE is whether the IEP is "reasonably calculated to enable a child to make progress in light of the child's circumstances." *Andrew F.*, 137 S. Ct. 988, 1001. PARA, who worked with the Student one on one for her 7th grade school year and during 8th grade, until the Parents voluntarily withdrew the Student from school on February 22, 2018, credibly testified that she ensured that the Student received her IEP accommodations and modifications and she worked closely with the Student's special education teachers to do so. (FF #29-31, 39-41.) Further, SPED1 and LT both credibly testified to assessments administered, the Student's independent and instructional reading levels, their respective progress monitoring, and the progress the Student made toward her IEP goals while in their respective special education classrooms. (FF #

45-54, 58.) Further, the Student was in a general education math class, with supports, and was able to achieve passing grades therein. (FF # 55-56.) This testimony was uncontroverted by Parents. This Hearing Officer finds that the uncontroverted evidence presented at hearing illustrates that the Student was making progress toward her IEP goals, was able to participate and succeed in a general education math class with appropriate supports, and was receiving passing grades in both reading and math. The Student was making academic progress in both reading and math and was therefore, at all times at issue, provided a FAPE.

While Parents request that this Hearing Officer award compensatory education in reading and math via access to the online resource of International Connections Academy to remediate the alleged FAPE denial, an award of compensatory education is not appropriate in this case. The ultimate award of compensatory education must be reasonably calculated to provide the educational benefits that would likely have accrued from the special education services the school district should have supplied in the first place. *See Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005). In the instant matter, the Student was making progress in light of her unique circumstances prior to the Parents' withdrawal of her from the District middle school. The Student's regression occurred after she was withdrawn from the District voluntarily by Parents. (FF #60.) As this Hearing Officer has found that the District provided the Student with FAPE at all times in question, consideration of a compensatory education award is unwarranted.

Extended School Year (ESY)

Parents allege that the Student was denied FAPE when the District failed to find her eligible for Extended School Year (ESY) services during the Summers of 2016 and 2017 and when it failed to provide the site requested by Parents for delivery of ESY services for Summer

2018. While there are no specific standards for states to use in determining whether disabled children should receive extended school year services, the federal regulations provide some criteria to be considered. See 34 C.F.R. §300.106, §300.320 through §300.324. “The determination of whether an individual disabled child needs [extended school year] services must be made by the participants on the child’s IEP team. In most cases a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for [extended school year] services based only on one criterion or factor.” *Todd v. Duneland School Corp.*, 299 F.3d 899, 906-907 (7th Cir. 2002). In *Todd*, the Court upheld the IEP team’s decision rejecting ESY services given the student’s lack of regression and ability to progress. *Id.* at 907. In the instant matter, the Student’s IEP team determined that she was ineligible for ESY services for Summer 2016 and Summer 2017 as she did not exhibit more than normal regression over the summer months and was making expected progress toward her relevant IEP goals. (FF #61, 64.) The testimony and documentary evidence presented at hearing was uncontroverted by Parents. Further, Parents did not provide any evidence to support their claim that the Student should have been found eligible for ESY services in those school years. (FF #64.)

For Summer 2018, the District offered ESY services to the Student as she had been voluntarily removed from the District middle school on February 22, 2018 and had remained unenrolled for the remainder of the school year. The Student’s IEP team was concerned about possible regression due to her removal from school. (FF #60, 62.) The District offer services to be delivered at either the local special education cooperative or a private therapeutic day school. Parents refused these services. Parents maintained that they wanted the ESY services offered at the District middle school. However, the District schools do not provide ESY. All ESY

services, for any student, are offered through the local special education cooperative. Parents provided no detail at hearing regarding the reason for their refusal of ESY services other than the site of service delivery was not to their liking. (FF #63.) Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that the District provided FAPE at all times in question with respect to ESY services. The evidence elicited at hearing illustrates that the Student was not eligible for ESY services during Summer 2016 and Summer 2017 based upon her lack of more than normal regression and progress toward her IEP goals. Further the District offered to provide ESY services during Summer 2018, however, Parents refused the services as the delivery site for same was not to their liking. Based upon this, it is the determination of this Hearing Officer that the District provided the Student with FAPE at all times in question.

It is the determination of this Hearing Officer that, at all times in question, the District has provided the Student with a FAPE. Parents' assertions to the contrary are unsupported by the evidence and Parents' requested relief is hereby denied.

ORDER

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

Parent's requested relief is denied and the complaint and amended complaints are dismissed with prejudice.

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 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: October 9, 2018

/s/: Janet K. Maxwell-Wickett
Janet K. Maxwell-Wickett,
Impartial Hearing Officer
[REDACTED]
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APPENDIX A

██████████ v. ██████████ SD ██████████
Case No: 2018-0277

Child	██████████
Attending School	██████████ High School (MCHS)
	Prior School – ██████████ Jr. High (JHS)
Local Special Education Cooperative	██████████ (██████████)
Child’s Parent(s)/Petitioners	██████████ (Mother)
	██████████ (Father)
Joint Witnesses:	
██████████	Principal – ██████████ Intermediate School (PRIN)
██████████	Paraprofessional (PARA)
██████████	██████████ Special Education Coordinator (SPED2)
██████████	Former ██████████ Jr. High Special Education Coordinator (SPED1)
██████████	School Psychologist (PSY)
██████████	School Nurse (SN)
██████████	8 th Grade Literature Teacher (LT)
██████████	██████████ Special Education Coordinator/LEA (NR)
██████████	Superintendent (SUP)
Parents Witness:	
██████████	Registered Nurse & Student’s Aunt (AUNT)