

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

█,

Student,

Case No: 2018-0470

v.

Kathleen C. Fuhrmann, Impartial Hearing Officer

█ CCSD █

School District.

FINAL DETERMINATION AND ORDER

and

Decision on Motion for Directed Verdict

JURISDICTION

The undersigned has subject matter 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.* and their implementing regulations. The personal jurisdiction in this matter of the undersigned is limited to the parties to this matter, specifically Student, Mother, and the █ Community Consolidated School District █

The standard of proof in impartial hearings under the IDEA is a preponderance of the evidence. The party seeking relief has the burden of proof and must establish that the fact sought to be proved is more probable than not. *Schaffer v Weast*, 546 U.S. 49, 44 IDELR

150 (2005). Here, Student/Parent are seeking relief and under *Schaffer*, she has the burden of proof.

BACKGROUND

On June 1, 2018, Petitioner/Parent, Student's Mother filed a Due Process Complaint ("Complaint") against the ██████████ Community Consolidated School District No. ████ ("District") pursuant to the Individuals with Disabilities Education Act ("IDEA") and relevant portions of the Illinois School Code and their respective implementing regulations. (IHO Ex. A.) Student, a fourteen-year-old student with a disability, is a former student within the District, now a freshman in the local high school district, District ██████. During his enrollment in the District, student was eligible for special education and related service under the IDEA disability categories of Other Health Impairments ("OHI") and Emotional Disabilities ("ED"). District filed its Response to Parent's Due Process Complaint on June 11, 2018. (IHO Ex. E.) The undersigned was appointed as the Impartial Hearing Officer ("IHO") on June 7, 2018.

This hearing arises out of a dispute between the Parent and District concerning whether Student was eligible for Extended School Year Services ("ESY") under the IDEA during the summer of the 2017-2018 school year, whether the IEP teams assembled by the District on January 30, 2018, and April 5, 2018 complied with IDEA requirements and whether the outcome of the April 5, 2018 IEP meeting was predetermined with respect to ESY services and whether, as a result of these alleged violations, Student was denied a free appropriate public education ("FAPE").

On June 11, 2018, District filed its Motion to Dismiss or in the Alternative, To Join ██████████ High School District ██████ (IHO Ex. F.) On June 14, 2018, Parent's

Response and Response to District's Motion to Dismiss or Join (hereafter "Motion to Dismiss or Join") was filed. (IHO Ex. G.) The initial status conference was convened on June 15, 2018. During the status conference the parties indicated their intent to waive the resolution meeting and participate in state-sponsored mediation services. The District requested additional time to Reply to the Parents Response to the Parent's Response and Response to District's Motion to Dismiss or Join. Parent did not object. Parent made an oral Motion for Leave to Amend the Due Process Complaint. District did not object. Parent was given leave to amend her due process complaint by June 29, 2018. By agreement, due to the anticipated Amended Due Process Complaint, the District's Motion to Dismiss or Join was stayed until the next status conference. (IHO Ex. H.)

On July 2, 2018, Parent's Amended Complaint and Response to District's Motion to Dismiss (dated June 29, 2018) was filed. (IHO Ex. I.) On July 6, 2018, during a status conference call the undersigned clarified the filing date of the Amended Complaint as July 2, 2018, and the due process timeline was reset pursuant to 34 C.F.R. §300.508(d)(4). The District orally renewed its Motion to Dismiss or Join and a briefing schedule developed. The parties indicated that they were still planning to the resolution meeting requirement to utilize state-sponsored mediation services. (IHO Ex. J.) Parent filed a Response to District's Motion to Dismiss or Join on July 9, 2018 (IHO Ex. L.) On July 12, 2018, the District timely filed its Response to Parent's Amended Request for Due Process (IHO Ex. M, pgs. 5-11.) and District's Reply in Support of Its Motion to Dismiss or in the Alternative to Join ██████████ School District ██████ (IHO Ex. M, pgs. 1 – 4.) The Order Granting in Part and Denying in Part District's Motion to Dismiss or in the Alternative to Join ██████████ High School District ██████ was issued on July 17, 2018. (IHO Ex.

The parties participated in state-sponsored mediation services on August 8, 2018. No agreements were reached during mediation.

The parties convened a Prehearing Conference at the District Administrative Offices on September 4, 2018. The hearing for this matter was scheduled. On September 6, 2019, the parties jointly requested a continuance and extension of the 45-day deadline to January 11, 2019, which was granted by order on September 12, 2018. (IHO Ex. Y)

Parent filed multiple Prehearing Motions on October 26, 2018. (IHO Ex. Z.) District responded on October 31, 2018. (IHO Ex. AA.) Parent replied in her Response – Preliminary Prehearing Motions on November 5, 2018. (IHO Ex. BB.) After discussion during a status conference call, a Status Order was issued on November 14, 2018 which included rulings on Parent’s October 26, 2018 Motions.

On November 20, 2018, Parent filed a Motion for In Camera review and Motion to Compel Record Production of Unredacted and/or Deleted Portions of Student Records by District [REDACTED]. The District did not object to the *in camera* review and it provided to the hearing officer redacted and unredacted copies of each document that was the subject of Parent’s motion for review with its Response to Parent’s Motion for *In Camera* Review and to Compel Unredacted Document & District Response to Parent’s Objections to Certain Documentary Evidence on November 21, 2018. The Order Granting Parent’s Motion for *In Camera* Review and Denying Parent’s Motion to Compel Record Production of Unredacted and/or Deleted Portions of Student Records by District was issued on November 26, 2018. In addition, an Order Denying Parent’s Objections to “Stamped” Documents Added to April 2018 IEP Meeting Documents Being Introduced As Documentary Evidence was issued on November 26, 2018. (IHO Ex. JJ.)

The closed hearing was held on December 10 – 11, 2018 at the [REDACTED] Community Consolidated School District [REDACTED] Administrative Offices located at [REDACTED] Illinois. The hearing was transcribed by Lisa Collopy, CSR, RPR of Collopy Reporting Service. Present at the hearing were [REDACTED], Petitioner/Parent pro se and Jennifer Mueller, Esq. with Caitlin Frenzer, Esq. of Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP as counsel for the District and Dr. [REDACTED], [REDACTED] CCSD [REDACTED] Director of Student Services as District representative.

SUMMARY OF EVIDENCE

Exhibits

Joint Exhibits admitted on behalf of Petitioner/Parent and Respondent/District are:

| | | |
|------|---|---|
| JE 1 | 05/26/2016 | IEP |
| JE 2 | 04/07/2017 | IEP (Annual Review) |
| JE 3 | 04/07/2017 | Consent for Independent Evaluation |
| JE 4 | 08/25/2017 | IEP |
| JE 5 | 01/21/2018 | Notification of Conference for 01/30/2018 IEP Transition Meeting |
| JE 6 | 02/01/2018 | Notification of Conference for 02/08/2018 IEP Transition Meeting |
| JE 7 | 04/05/2018 | IEP |
| JE 8 | 2016-17 (T2, T3); 2017-18 (T1, T2, T3) | Report Cards |
| JE 9 | 2016-17 2017-2018 | MAP Assessment Reports |

| | | |
|-------|------------|---|
| JE 12 | undated | ISBE Educator Licensure Information System |
| JE 13 | 11/15/2016 | School District [REDACTED] 2016-2017 calendar |
| JE 14 | 01/23/2017 | School District [REDACTED] 2017-2018 calendar |
| JE 15 | 12/11/2018 | Joint Stipulations of Fact |

Exhibits admitted on behalf of Petitioner/Parent are:

| | | |
|--------------|----------------|---|
| P3-27 | 04/25/2017 | Email chain: Balcarcel & Parent |
| P5-4 to 5 | 01/30/2018 | Staffing Note |
| P5-9 to 12 | 02/06 -08/2018 | Email chain: Dzik & Grogger |
| P6-13 | 12/13/2017 | Email: Incident Report |
| P6-15 | 10/10/2017 | Email: Discipline |
| P6-16 | 10/04/2017 | Email: Discipline (Unsafe Conduct) |
| P6- 22 to 24 | 03/19/2018 | Email |
| P6-38 | 04/03/2018 | Email |
| P6-39 | 04/03/2018 | Email |
| P6-40 to 45 | 04/05/2018 | Draft IEP Goals and Objectives/Benchmarks |
| P6-49 to 68 | 04/05/2018 | Draft IEP |
| P6-71 | 04/04/2018 | Email: IEP |
| P7- 39 to 40 | 2017-18 | Behavior Logs |
| P7-41 | 05/14/2018 | Letter re: ISS |
| P7-42 | 3/12/2018 | Letter re: ISS |
| P7-43 | 02/06/2018 | Student Behavior Form |
| P7-44 | 03/06/2018 | Student Behavior Form |

| | | |
|-------------|--------------|--|
| P7-45 | 03/09/2018 | Student Behavior Form |
| P7-46 | 05/11/2018 | Student Behavior Form |
| P7-47 | 05/18/2018 | Student Behavior Form |
| P7-48 to 90 | | IH 8 th Grade Behavior Tracking Form With Raw Data |
| P8-1 to 2 | 2017-2018 SY | Quick Lookup: Grades & Attendance |

Exhibits admitted on behalf of Respondent/District are:

| | | |
|----------------------|---------------|--|
| SD2 | 01/30/2018 | Staffing Notes for IEP Meeting |
| SD3 | 04/05/2018 | Staffing Notes for IEP Meeting |
| SD4 | Spring 2017 | Behavior Monitoring Log -7 th gr., Trimester 3 |
| SD5 | 2017-2018 | Behavior Monitoring Log – 8 th grade |
| SD7- 150 to 158, 164 | various dates | Email Correspondence |
| SD8-165, 171 to 174 | various dates | Email Correspondence |

Testimony

All witnesses were presented as joint witnesses. The following persons testified:

██████████, Petitioner/Parent,

████████████████████, General And Special Education Teacher,

██████████, School Psychologist,

████████████████████, Special Education Teacher,

██████████, Retired School Secretary,

██████████, District ██████ School Social Worker¹,
██████████, General Education Teacher,
██████████, Middle School Assistant Principal,
██████████, Student,
██████████, School Social Worker,
██████████, Middle School Principal,
██████████, District ██████ Special Education Department Chair²,
██████████, Middle School Student Services Coordinator, and
██████████, Director of Student Services.

At closing, the parties presented oral closing argument and submitted written Points of Authority on December 14, 2018.

ISSUES

The issues to be determined are as follows:

Issue One: Whether District ██████ failed to consider whether Student needed Extended School Year Services (hereafter “ESY”) during the IEP meetings convened on:

- a. April 7, 2017,
- b. August 25, 2017, and/or
- c. April 5, 2018

If so, did such failure result in the denial of a free appropriate public education (hereafter “FAPE”) to Student?

¹ Amy Dickerson, Esq., of Franczek Radelet, P.C. as counsel for District ██████ was present during the testimony of this witness. Parent objected to the presence of counsel on the basis of student’s right to confidential/closed proceedings. Ms. Dickerson was allowed to accompany District ██████ witnesses due to their being under subpoena to testify which was requested by both parties.

² Amy Dickerson, Esq., of Franczek Radelet, P.C. as counsel for District ██████ was present during the testimony of this witness. Parent objected to the presence of counsel on the basis of student’s right to confidential/closed proceedings. Ms. Dickerson was allowed to accompany District ██████ witnesses due to their being under subpoena to testify which was requested by both parties.

Issue Two: Whether the District's January 30, 2018 and /or April 5, 2018 IEP meetings team composition complied with IDEA requirements? If not, did this result in the denial of a FAPE to Student?

Issue Three: Whether the District predetermined the outcome of the April 5, 2018 IEP meeting for Student with respect to ESY services and accommodations (extended time for testing), thereby denying Parent's right to participate in educational decision making for Student? If so, did this result in the denial of a FAPE to Student?

RELIEF SOUGHT:

Parent is seeking an award of compensatory services for Student, including tutoring in English for eight weeks at 20 hours per week to address written expression, reading practice and proper structure and sequence and Counseling/Social Work services eight weeks for 30 minutes per week focusing on transition goals, behavior and upcoming school year preparedness. Parent is requesting that these services be split and provided during the summers of 2018-2019 and 2019-2020 school years. Parent requested any other relief the hearing officer deems appropriate based on Student's needs.

District seeks findings in its favor and that all requests for relief be denied.

FINDINGS OF FACT

After considering all the evidence presented, as well as the arguments of both parties, this Hearing Officer's Findings of Fact are as follows:

Background

1. The Student, date of birth July 7, 2004, a 14-year-old student who is eligible for special education and related services pursuant to the *Individuals with Disabilities Education Act* (“IDEA”) under the categories of Other Health Impairments (“OHI”) (primary) and Emotional Disability (“ED”) (secondary). (Joint Stipulation of Facts, #1.) Student has been diagnosed with ADHD since kindergarten. Student has a lot of energy, is impulsive with decision making and has to be reminded of responsibilities and consequences frequently. (Testimony of Parent.)
2. Student graduated from [REDACTED] School District no. [REDACTED] on May 32, 2018. (Joint Stipulation of Facts, #2.)
3. Student currently attends [REDACTED] High School District [REDACTED] (Joint Stipulation of Facts, #3.)
4. Student was eligible for and participated in ESY for the 2015 and 2016 summer periods. The Student’s placement was at a therapeutic day school. (Joint Stipulation of Facts, #4.) In 2016 Student’s behavior data showed regression during extended breaks. (JE 1-41.)
5. At the time of the May 26, 2016 IEP meeting (6th grade), Student was reported to have passing grades (an A, B, C and passing) in general education classes at the Middle School, good participation, no missing assignments, and his behavior was reported to be “typical little 6th grade boy stuff” in P.E. by his middle school teachers. (JE 1-4.) Student’s performance at the therapeutic day school was markedly different at that time; his attendance, grades and behavior were all poorer. The day school team indicated concern

about returning Student to Middle School in fall and recommended full-time therapeutic day school placement. (JE 1- 5 to 6.)

6. All educational staff testifying in this matter, including District ■■■ employees, held at the relevant times and continue to hold current Illinois Educational Licensure with appropriate approvals/endorsements for the areas of their employment and required levels of post-secondary education. (Testimony of 7th Grade Case Manager/8th Grade General Education Teacher, School Psychologist, 8th Grade Case Manager, District ■■■ Social Worker, 7th General Education Teacher, Middle School Assistant Principal, School Social Worker, Middle School Principal, District ■■■ Special Education Department Chair, Middle School Student Services Coordinator, and Director of Student Services, and JE12-1 to 35.)

7. It is the “best practice” of the District to provide parents with copies of draft IEPs prior to IEP meetings. This practice allows parents to review reports and IEPs outside of the meeting setting, allows the parents to be prepared with questions and concerns at the meeting, and generally is a time-saving measure during the meetings. (Testimony of Student Services Coordinator.)

8. IEP meeting notes are typed by Student Service Coordinator as a summary of the discussions at the meetings. Notes are not meant to be a verbatim record of the discussions at the meeting, but to supplement the other sections of the IEP. (Testimony of Student Services Coordinator.)

9. It is the District’s practice to enter notes in the Extended School Year Services section of the IEP document only if the determination is that ESY is needed. Then the

team's discussion concerning the consideration is captured on the form. (Testimony of Student Services Coordinator.)

10. If parents disagree with the District's summary of the IEP notes they are able to submit a rebuttal which is then attached to and incorporated as part of the IEP. (Testimony of Student Services Coordinator.)

11. Student's grades are lower at the beginning of the school year. Student needs to be engaged in positive way during non-school hours. He participates in sports, and Boy Scouts. Outside of the house, Student rides his bike, goes to the trampoline park and attended summer school. Student likes school and felt that the Middle School was challenging to him. During the summer he completed math, language arts and social studies packets his mother prepared for him, went to the library and skate park. (Testimony of Student and Parent.)

12. The Parent enrolled the Student in summer school at District [REDACTED] ([REDACTED] High School) during the summer of 2018. (Joint Stipulation of Facts, #5.)

2016-2017 School year

13. At the beginning of Student's 7th grade year, he was attending a therapeutic day school and Middle School. Student was a typical 7th grade student in the classroom at the Middle School. Student was able to express himself orally and was very energetic. The main concerns for Student were social interactions with peers. (Testimony 7th Grade Science Teacher, and 7th Grade Case Manager.)

14. Third trimester of the 16-17 school year, Student began attending Middle School full time. Initially, Student needed more support from teachers with his behavioral goals independently managing transitions, expectations, and with respectful peer interactions.

After Student adjusted to the transition to Middle School, teachers reported that Student got to class, settled down and completed his assignments and worked. His inappropriate behaviors tended to be in unstructured settings such as lunch and recess. (Testimony 7th Grade Science Teacher, Principal and 7th Grade Case Manager, SD 4-32 to 52.)

15. Student's IEP contained only behavior goals, including to independently engage in respectful participation with peers, and to follow classroom expectations. (JE 2-52 to 55.) This goal was worked on with the social worker and the general education teachers completed behavior monitoring reports to measure progress toward the goal. (Testimony of Social Worker and 7th Grade Case Manager.) All of Student's classes were general education classes, the IEP did not contain academic goals. Student received a behavior modification system accommodation, check for understanding with complex tasks and new expectations, and clear consistent classroom routines in the general education setting. (JE2-56 & 62.)

16. During the 7th grade IEP term, Student made steady process toward achieving his respectful participation goal, and slight progress towards following classroom expectations. (JE 2-52 to 55.) Student's grades were generally good during the third trimester of 7th grade. Student earned one A, four Bs, one C, one D and one F. (JE 8-129.)

17. 7th Grade Case Manager didn't recall any behavioral regression over breaks noted in the data collected. (Testimony of 7th Grade Case Manager.) Behavior Monitoring reports for the 7th Grade 3rd Trimester show that Student was able to independently manage transitions to class 82.4% of the time, independently manage expectations 71.7% of the time, and to participate in respectful peer social interactions 82% of the time. Review of the raw data supporting this report shows that on seven separate dates, from April 4, 2017 to

May 25, 2017 Student had difficulties in keyboarding class that required intense intervention and one day of difficulty remaining on task in Science class. No other periods of intense interventions were noted in the data. (SD 4-32 to 52.) Student had one office behavior intervention during the 2016-2017 school year for cheating/plagiarism/forgery related to a poem. (P7-39.)

April 7, 2017 IEP meeting

18. The purpose of the IEP meeting was to complete an annual review of the IEP and reevaluation. (JE 2-49.) The IEP team reviewed domains for evaluation after a Hearing Officer, ordered an academic and cognitive evaluation of Student in a March 20th order. (JE 2-67.) The team reviewed all domains. The team found the Social/Emotional domain was relevant as an area of disability for Student. However, based on Student's eligibility and needs, but the team determined that the Spring 2016 evaluation report sufficiently identified his needs so no new evaluations were needed. (Testimony of School Social Worker and JE2-70)

19. Present levels of performance indicated that Student was prepared for class at the Middle School but often needed prompting and redirection during peer interactions. Difficulty with peer relations caused Student to require a structured environment and behavior intervention plan within the general education environment (JE2-51.)

20. Student was to start full-time placement at Middle School on April 10, 2017 pursuant to a due process ruling. (JE2-65.) Student's placement changed to 98% in general education with supplementary aides, accommodations to address behavior and social needs including a behavior plan, checks for understanding in new tasks, and 2 behavior goals addressing his need for respectful participation with peers and following classroom

expectations during 40 mpw (minutes per week) direct social work services in a separate setting and a behavior plan. (JE2-49 to 76.)

21. The team discussed the requirements for ESY services for Student and determined that he did not qualify for ESY at the time. The IEP contained a statement that ESY services are not needed. (JE 2- 63 & 66.) The team had not seen regression with the Student. (Testimony of 7th Grade Case Manager, Student Services Coordinator and JE 2-63.) Student's behavior was not sticking out at the end of the school year and data indicated that he was making progress on his goals. There was nothing in his record that demonstrated regression or recoupment problems for Student. (Testimony of School Social Worker.) Parent disagreed because Student had been only receiving academics from her for the last few months.³ Parent agreed to review ESY eligibility after evaluation was complete. (JE 2-66.)

2017-2018 School year – 8th Grade

22. Student performed better overall in 8th grade. He was better with transitions and was keeping up in class. (Testimony of Case Manager, 8th Grade Science Teacher, SD2-28 to 29, SD 3- 30 to 31.) Student was generally able to be redirected. (Testimony of 8th Grade Science Teacher.) His grades were generally B's and C's, however there were some behavior problems, (Testimony of 8th Grade Case Manager, JE8-130 to 169.) Student made steady progress on his behavioral goals. (Testimony of School Social Worker.) Student's progress monitoring data showed a slight decrease in the overall percentage of independent transitions, and balanced participation from 3rd trimester of 7th grade and a slight increase in percentage of independent meeting classroom expectations and respectful participation.

³ Parent's assertion was a bald assertion, there was not evidence provided in support of this allegation.

Student demonstrated a 13% increase in independent turn taking. (SD4-32 to 52 and SD5-75 to 117.)

23. Student did experience a dip in his positive behaviors at the end of 8th grade which is not atypical for 8th grade. It is not unusual for a number of students act up at the end of 8th grade. He had difficulty with unstructured times during the 3rd trimester. The school supports all students, including Student, to keep them on track during the 3rd trimester by meeting with them as a team, giving strikes and removing privileges. Student was not the only student who had things removed at the end of the school year. (Testimony of 8th Grade Science Teacher, and School Social Worker.)

24. Behavior logs reflect that during the 2017-2018 school year student was involved in 15 total incidents that resulted in the intervention of the Assistant Principal. There were five (5) incidents characterized as harassment/bullying, four (4) incidents of fighting/physical aggression, two (2) incidents of unsafe conduct, one incident labeled technology violation, one inappropriate/hurtful language, one major disruption, and one vandalism/damage to school property. (P7- 39.) Records provided show that Student was sent to ISS 1.5 days, received 3 AM/PM detentions as a result of his behaviors and ten (10) days of lunch detentions and a student conference. (P7-41, See re: ISS P7-41, 7-42, 7-45, 7-46, re: AM/PM Detentions P7-43, 7-44, and Lunch Detentions (5 days each) P6-15, P6-16, and Student Conference P6-13.) These problems were intermittent. Student had long periods where he had good peer interactions with gaps between incidents ranging from about a month to two months. (Testimony of Assistant Principal and P7-39.) The Student was viewed as having a pretty good year even though he was still having problems in the area of

peer relationships at the end of his eight-grade year. (Testimony of Assistant Principal, and 8th Grade Science Teacher.)

25. Student met with Case Manager regularly to review his progress. Student made progress on his goals. Case Manager checked in with Student's 8th grade team. Student's team did not express concerns for Student other than for his missing work. (Testimony of Case Manager.)

26. Student's MAP history and eight grade scores demonstrate that Student has demonstrated significant academic growth and at times, more than typical gains. Student's performance is in the average range for a boy his age. (Testimony of School Psychologist and Student Services Coordinator.)

27. Overall Student made progress in 8th grade academically and behaviorally.

2017-2018 IEP Meetings

August 25, 2017

28. Parent, LEA Representative, 8th Grade Social Studies Teacher as general education teacher, Case Manager as special education teacher, School Social Worker, School Psychologist, and – as special education administration designee participated in the August 25, 2017 IEP. (Testimony of Parent, 8th Grade Social Studies Teacher, 8th Grade Case Manager, School Social Worker, School Psychologist, and Special Education Coordinator and JE4-81.)

29. The team reviewed and considered the outside evaluation of the Student's academic and cognitive function. Student was found to have average to high average in the IQ tests and that his visual spatial skills are in the superior range. Student's achievement testing showed him to be in the average to high average range. (JE4-82 to 89, Testimony of School

Psychologist, School Social Worker, 8th grade Social Studies Teacher, 8th Grade Case Manager, and Student Services Coordinator.) Student's performance on the MAP tests was consistent with the outside cognitive and academic testing. (JE 4-87.) Student's academic achievement is consistent with his abilities as measured on the outside cognitive and academic testing. (Testimony of School Psychologist.) After reviewing the outside evaluation, the team determined that no changes were needed to Student's IEP. (Testimony of School Psychologist, 8th Grade Social Studies Teacher, 8th Grade Case Manager, School Social Worker and Student Services Coordinator.)

30. The meeting ended abruptly after a dispute arose concerning whether or not the meeting was being recorded by Parent. (Testimony of School Psychologist, School Social Worker, and Student Services Coordinator, JE 4-82.)

31. The IEP team did not specifically discuss ESY services at this meeting. It was early in the academic year and there had been no school breaks. The team still had winter and spring to monitor Student's progress, so the team members believed there was no need for ESY services to be discussed at that time. (Testimony of School Psychologist, School Social Worker, and 8th Grade Case Manager.)

32. Review of Student's academic and cognitive evaluation and the MAP scores did not indicate a need for ESY services for academic concerns. (Testimony of School Psychologist.)

January 30, 2018 IEP Meeting

33. The District scheduled an IEP meeting on January 30, 2018 to serve as the transition meeting with [REDACTED] High School staff. (JE5-90.)

34. The purpose of the meeting was to review the IEP and discuss his classes and programming for high school. (Testimony of 8th Grade Case Manager, District 2017 Special Education Chair, SD7-150, and SD7-151.)

35. The January 30th meeting did not take place. Student's general education homeroom teacher did not attend the meeting and Parent would not agree to excuse her from the meeting. (Testimony of 8th Grade Case Manager, School Social Worker, Student Services Coordinator, District [REDACTED] School Social Worker, and District [REDACTED] Special Education Chair.)

February 8, 2018 IEP Meeting

36. Student Services Coordinator worked to reschedule the transition meeting with Parent, [REDACTED] High School staff and Parent. The District proposed rescheduling the Transition meeting on February 8, 2018, which would have required Parent to waive her right to 10-day notice. (Testimony of Student Services Coordinator, and District [REDACTED] Special Education Chair, SD 7-152, and JE 6-91.)

37. Parent responded agreeing to the date and to waiving the 10-day notice but objected to the completion of the annual review at that time. (Testimony of Student Services Coordinator, SD 7-155.)

38. The February 8, 2018 meeting did not occur when, on February 5, 2018 Parent changed her mind about waiving 10-day notice. Parent did not waive the 10-day notice. (Testimony of 8th Grade Case Manager and District [REDACTED] Special Education Department Chair, SD7- 153.)

39. The transition IEP meeting was then rescheduled on April 5, 2018. (SD7-157, Testimony of Student Services Coordinator and District █████ Special Education Department Chair.)

40. Prior to the April 5, 2018 IEP meeting, Social Worker collaborated with School Psychologist to develop a draft BIP for Student. (Testimony of School Social Worker and School Psychologist, P6-22 to 24.) The draft was reviewed by other staff and sent to Parent by the Case Manager before the meeting. (Testimony of School Social Worker, and 8th Grade Case Manager, P6-22 to 24.)

April 5, 2018

41. Prior to the IEP meeting, the District provided Parent copies of the documents that would be considered at the IEP meeting, including a draft IEP (P6-38, 39, 40 to 45, 49 to 70), behavior plan, discipline referral log, MAP scores and reports from teachers (i.e. staffing notes (P6-71 and SD 3-40 to 41.)). (Testimony of 8th Grade Case Manager.)

42. On April 5, 2018, when the District █████ team arrived, they were seated in a conference room before the IEP meeting started. (Testimony of District █████ Special Education Department Chair and District █████ School Social Worker.) Staff members waiting in the conference room for the start of the IEP meeting greeted one another and chatted. (Testimony of 8th Grade Science Teacher, District █████ Social Worker, and District █████ Special Education Department Chair.) There was no discussion of Student outside of the presence of the Parent that day. (Testimony of District █████ Social Worker, District █████ Special Education Department Chair.)

43. When Parent arrived for the IEP meeting, she was asked to wait in the office by the School Secretary because the team was not ready to start the meeting. It was common for

parents to wait for an IEP meeting to start. (Testimony of Retired School Secretary.) IEP meetings did not start without a parent present. (Testimony of Retired School Secretary, School Social Worker, and District 2017 Special Education Chair.)

44. Parent, LEA Representative, 8th Grade Science Teacher as general education teacher, 8th Grade Case Manager as special education teacher, Principal, School Social Worker, Student Services Coordinator as special education administration designee, ██████████ High School Special Education Department Chair, ██████████ School Social Worker, ██████████ Special Education Teacher/Case Manager, and ██████████ High School Counselor, participated in the August 25, 2017 IEP. (Testimony of Parent, 8th Grade Science Teacher, 8th Grade Case Manager, School Social Worker, and Special Education Coordinator and JE7-191.)

45. The IEP meeting was a combined annual review of the IEP and transition meeting. The IEP team discussed goals, reviewed grades and behavior data, placement, and schedule for Student (Testimony of 8th Grade Case Manager, 8th Grade Science Teacher, and School Social Worker.)

46. At the beginning of this meeting, Parent asked to wait until the end of the meeting to provide her input. (Testimony of 8th Grade Case Manager, and Principal.)

47. At this meeting an IEP, behavior and secondary transition plans were developed for the remainder of the 8th grade year and for 9th grade transition to high school. The team did not change Student's LRE placement and he was found ineligible for ESY services (JE7-212, 7-214.) ESY services were discussed at the meeting and a statement was included in the IEP that ESY services were not needed. (Testimony of 8th Grade Case Manager, District ██████ School Social Worker and JE 7 -214 & 217.) The team also determined that

Student did not need assessment accommodations. (Testimony of 8th Grade Case Manager, School Social Worker, and JE7-212, 214 to 217.)

48. Parent stated that ESY services had been stripped from Student and that she felt that the ESY decisions were not made during the IEP meetings. (JE7-217.) She asked the team to reconsider ESY. The team believed that Student did not show a need to for ESY services based on the review of his progress in academics and toward achieving his IEP goals. (Testimony of 8th Grade Case Manager and Parent.)

49. General education teachers do not generally participate in the transition IEP meeting but can and do when the parent and/or student want them involved in the process. She participated in this meeting. (Testimony of 8th Grade Science Teacher.)

50. District staff who participated in the IEP recall Parent's participation in the meeting and that there was a give and take in the conversation. Parent raised concerns that were considered and discussed. (Testimony of 8th Grade Science Teacher, 8th Grade Case Manager, Principal, Social Worker, Student Services Coordinator, District ■■■ Special Education Department Chair, and District ■■■ Social Worker.)

51. The delay in convening the transition meeting and resulting in convening the transition meeting with the annual review did not impact Student's ability to get any of his preferred classes in high school and did not negatively impact his IEP services. (Testimony of Case Manager, District ■■■ School Social Worker, and District ■■■ Special Education Chair.)

52. The District staff contributed to the reports that were prepared in advance of the IEP meeting and were provided to the Parent. The District staff also completed a draft IEP that is shared with the parents in advance of the IEP meeting in an effort to allow the parent to

review the information contained in the reports in advance of the meeting and be prepared with questions, comments and to raise concerns during the IEP meeting. The District staff members believe that the sharing of reports and draft IEPs saves time, allows the parents to be better prepared for the meetings which results in better discussions. The IEP is modified based on the discussions and decisions made during the meetings, especially where parent input is the basis for changes after the review of the draft IEP documents. (Testimony of 8th Grade Science Teacher, and School Social Worker.)

53. No meeting was convened prior to the April 5, 2018 IEP meeting to discuss or decide on the placement, ESY eligibility or other IEP decisions. (Testimony of 8th Grade Science Teacher, School Social Worker, and School Psychologist.)

Compensatory Education request

54. Parent testified that Student needed ongoing behavioral and social skills services to practice what he had learned and to work on his goals. Parent stated that Student needed to work on self-control and balanced participation. In addition, during the summer of 2018, Parent feels that ESY services to provide Student with connection and support to the high school environment should have been provided to him due to the size of the school and his need for social work/counseling services for a personal issue. While Parent believes the personal issue had an effect on Student's his schoolwork, the Social Worker did not. (Testimony of Parent and Social Worker.)

55. During the 2017 and 2018 summers, Parent provided Student with counseling services for a personal problem, provided him with worksheets she found online, made sure that he did not have "dead time." (Testimony of Parent.) No further evidence of need for services or for the type and/or cost of services was provided at hearing.

56. During the summers Student completed math, language arts, and social studies packets that his mother prepared for him. His mother provided him with tutoring. Student needed to be engaged in activities out of the house, such as riding his bike, going to the trampoline park and going to summer school. (Testimony of Student.)

DISTRICT'S ORAL MOTION FOR DIRECTED VERDICT

District made an Oral Motion for Directed Verdict after Parent completed the presentation of her case and all documents relied upon during the hearing were reviewed and moved into evidence. The District moved for a directed verdict on two bases.

First, District seeks a directed verdict on Issue #2: Whether the District's January 30, 2018 IEP meeting team composition complied with IDEA requirements? If not, did this result in a denial of a FAPE to Student? Next, the District seeks a directed verdict on Issue Three: Whether the District predetermined the outcome of the April 5, 2018 IEP meeting for the Student with respect to accommodations (extended time for testing), thereby denying Parent's right to participate in educational decision making for Student? If so, did this result in a denial of a FAPE to Student?

It is the hearing officer's primary responsibility in resolving the due process complaint through the implementation of the IDEA and Illinois special education law. Hearing officers exercise the broad authority granted as they determine issues presented to the during the course of the prehearing and hearing process and in determining the scope of appropriate relief, if any. *Letter to Kohn*, 17 IDELR533, *S-1 Spangler*, 588 IDELR 179, *vacated as moot*, 559 IDELR 266; *Cocares v Portsmouth Sch. Dist.*, 18 IDELR 461m 462-463. The hearing officer should manage the hearing process in a manner that accords each party a

“meaningful opportunity to exercise the rights” accorded to them under the IDEA and Illinois law during the course of the hearing. Apart from the hearing rights set forth in Part B of the IDEA and the Illinois School Code decision regarding the conduct of hearings are left to the discretion of the hearing officer. *Letter to Anonymous*, 23 IDELR 1073 (OSEP 1994.) The federal and/or state rules of civil procedure do not apply in these proceedings, except by way of analogy or as prescribed in the IDEA.

Under Federal Rules of Civil Procedure 50(a), a motion for directed verdict must be granted if under the governing law, there can be but one reasonable conclusion as to the verdict. *Brady v Southern R. Co.*, 320 U.S. 476, 479-480 (1943). Illinois Rules of Civil Procedure requires the trier of fact to consider the weight and quality of the evidence and consider the credibility of the witnesses. (735 ILCS 5/2-1110.) The Illinois Supreme Court has provided other guidance in *Kokinis v. Kotrich*, (81 Ill.2d 151, 40 Ill. Dec. 812, 407 N.E.2d 43 (Ill. 1980)) in for the determination of a motion for directed verdict. The Court directs that the first inquiry is whether the Plaintiff has established a *prima facie case*⁴, if not the motion should be granted. If the Plaintiff has not established a *prima facie case*, then all evidence should be weighed, the standard of proof required in the underlying cause applied to determine if sufficient proof remains to sustain a *prima facie case*.

Whether the District’s January 30, 2018 IEP meeting team composition complied with IDEA requirements?

First, on the issue of team composition on January 30, 2018, District asserts that the evidence shows that there was no IEP meeting held on January 30, 2018 because the parent

⁴ A *prima facie case* is established when the petitioner presents sufficient evidence to reasonably allow the conclusion petitioner seeks to be made. (*Black’s Law Dictionary*, 1190 (6th ed. 1990).

did not agree to excuse the participation of the general education teacher and the meeting was cancelled and rescheduled on a later date. (FF# 35.) Parent's own testimony was that the meeting did not occur on that date. District asserts that because there was no meeting, there was no team composition that could be in violation of IDEA and Illinois requirements. District asserts that Parent did not meet her burden on this issue and seeks a finding in favor of the District.

Parent argued that IDEA and Illinois law require the school district to have a regular education teacher as a participant in IEP development. Parent argued that each member of the team arrived and was present except the general education teacher, therefore this was a meeting. In support, Parent cites that because 8th Grade Case Manager and District ■■■ Special Education Department Chair both responded to her question concerning the scheduled meeting, this means that it was in fact a meeting and the lack of a general education teacher was a procedural violation. However, their responses were that the meeting did not go forward, it was cancelled after Parent would not move forward without the general education teacher.

The school district is charged with the responsibility to assure that the IEP team for students with disabilities includes the parents, not less than one regular education teacher of the child, not less than one special education teacher or special education provider, a representative of the district also known as the LEA Representative (who is qualified to provide or supervise the provision of specially designed instruction designed to meet the unique needs of children with disabilities, is knowledgeable about general education curriculum, and is knowledgeable about the availability of resources of the district), and if evaluations are being considered someone who can interpret the instructional implications

of evaluation results. The parent and district have discretion to include other individuals who know knowledge or special expertise regarding the child, including related services personnel, as appropriate. 34 C.F.R. §300.321(a). Illinois regulations additionally require that the general education teacher is a teacher who is or may be responsible for implementing a portion of the IEP, that the LEA Representative shall have the authority to make commitments for the provision of resources and be able to insure that the IEP will be implemented, and that in the case of a child with behaviors that interfere with his/her learning a person on the team should have knowledge about positive behavior strategies. 23 Ill. Admin. Code §226.210(a), (d), and (f).

Here, the IEP that was in place for Student prior to the January 30th meeting demonstrates that Student was receiving 40 minutes per week of social work services outside of the general education classroom and all academics were in the general education setting with accommodations and supplementary aids, (JE 2-62.) social work goals (Je 2-52 to 55) and a behavior plan (JE 2-74 to 76.) Accordingly, the District was required to provide an IEP team for Student for the January 30, 2018 IEP meeting that included parent, student, general education teacher, special education teacher, social worker, and LEA Representative. Parent's evidence concerning the January 30, 2018 IEP team composition showed that the District Notification of Conference for the January 30, 2018 IEP meeting included all required members (Parent, Student, the 8th Grade Science Teacher as the general education teacher, the 8th Grade Case Manager as special education teacher, the current Director of Student Services as the LEA Representative, the Student Services Coordinator, and Social Worker, a related service provider. (JE 5.) The meeting was a transition IEP to facilitate the transition between middle school and the high school. (FF

#33, 34.) District also invited the high school guidance counselor, Special Education Department Chair, Case Coordinator, and Social Worker to this meeting. (JE 5.) Parent elicited testimony concerning this meeting from the various invited members. The 8th Grade Science Teacher testified that she was not available for the meeting and did not attend. All other invitees who testified at the hearing testified that the January 30, 2018 IEP meeting did not take place. (FF #35.) It was rescheduled.

The evidence shows that the meeting did not take place, reasonable minds would not hold that the District violated the IDEA team composition requirement at a meeting that did not occur. If the Parent's issue is read to imply that the District failed to invite the appropriate IEP team members the result is the same. The evidence shows that the District invited all required team members required to address Student's identified needs and in compliance with IDEA and Illinois regulations. Parent has not produced a preponderance of evidence demonstrating that the District's January 30, 2018 IEP team composition failed to comply with the requirements of the IDEA or Illinois regulations. On the issue of whether the District's January 30, 2018 IEP meeting team composition complied with IDEA requirements I find for the District. The motion for directed verdict is granted on this issue.

Whether the District predetermined the outcome of the April 5, 2018 IEP meeting for the Student with respect to accommodations (extended time for testing), thereby denying Parent's right to participate in educational decision making for Student?

Next, the District seeks a directed verdict on Issue Three: Whether the District predetermined the outcome of the April 5, 2018 IEP meeting for the Student with respect to accommodations (extended time for testing), thereby denying Parent's right to participate in educational decision making for Student? If so, did this result in a denial of a FAPE to

Student? District asserts that no evidence on accommodations was presented at the hearing. District asserts that Parent did not meet her burden and seeks a finding in favor of the District.

Parent asserts that there is evidence concerning accommodations in evidence because each IEP contains a section concerning accommodations and there is a draft version of the April 5, 2018 IEP in evidence. Parent asserts that comparison of the two documents will demonstrate the lack of input and considerations made during the meeting.

IDEA requires that the IEP includes a statement of any individual appropriate accommodations that are necessary to measure academic achievement and functional performance of the student on state and districtwide assessments. 34 C.F.R. §300.320(6). The Assessment section of the draft version and the final version of the April 5, 2018 IEP are identical. (P 6-61 to 62 and JE 7 -206 to ██████ In addition, IDEA requires that the District must take steps (including notification, scheduling at a mutually agreed time and place) to assure that a parent of the student is present at the IEP meeting or are afforded an opportunity to participate. 34 C.F.R. §300.322 and 34 C.F.R. §300.501(c). Illinois regulations incorporate the federal regulations with additional requirements for notice and interpreters. 23 Ill. Admin. Code §226.530.

Parent did not elicit testimony concerning lack of notice or the need for interpreters. Parent did not elicit testimony concerning discussion or lack of discussion of assessment accommodations during the hearing. The District's assertion that there is no evidence is incorrect. Documentary evidence was provided in the form of a draft version and the final version of the April 5, 2018 IEP. Evidence does show that Parent attended the IEP meeting (FF# 44) and choose to withhold her input to the team until after the team finished its

presentation and discussion (FF#46.) The April 5, 2018 IEP contains two (2) pages of notes documenting Parent's input. (JE7- 217 to 218.) No evidence, documentary or testimony was presented demonstrating that any decision was made outside of the IEP meeting. (FF# 53.) In addition, Parent did not allege any procedural violation with the notice for this meeting or the need for interpreter services.

Parent has not produced a preponderance of evidence demonstrating that the District predetermined the assessment accommodations during the April 5, 2018 IEP meeting. On the issue of whether the District predetermined the assessment accommodations during the April 5, 2018 IEP meeting I find for the District. The motion for directed verdict is granted on this issue.

CONCLUSIONS OF LAW

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

Issue One: Whether District ■ failed to consider whether Student needed Extended School Year Services (hereafter "ESY") during the IEP meetings convened on:

- a. April 7, 2017,
- b. August 25, 2017, and/or
- c. April 5, 2018

If so, did such failure result in the denial of a free appropriate public education (hereafter "FAPE") to Student?

IDEA guarantees students with disabilities a free appropriate education or FAPE.
20 U.S.C. §1412(a)(1). Districts must comply with the procedural and substantive

requirements of IDEA to provide a FAPE to a student. *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). Recently, the Supreme Court clarified that a school fulfills its substantive responsibility to provide a FAPE by offering the student “an IEP reasonably calculated to enable a child to make progress in light of the child’s circumstances.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.) “An IEP is reasonable 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 F3d. 603, 615 (7th Cir. 2004.)

Under the IDEA ESY services means the special education and related services that are provided to a student with disabilities beyond the normal school year in accordance with the student’s IEP, at no cost to the child’s parents to receive a FAPE and meet the standards of the state educational agency. 34 C.F.R. §300.106(b). ESY services must be provided *only* when the student’s IEP team determines that ESY services are necessary for the provision of FAPE to the student (*emphasis added*). 34 C.F.R. §300.106(a)(2). IDEA does not provide a test to determine when ESY services are “necessary.” Some students with disabilities may not receive a FAPE unless they receive necessary services when school is in session and when it is not. The Comments clarify that “only” was included in the definition to be limiting and to provide the appropriate parameters to the responsibility to the IEP team. States may use the concepts of “recoupment and “likelihood of regression or retention” as the basis for the standard for ESY eligibility. *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46582.

Illinois uses the federal regulation without expansion as the definition for ESY services. 23 Ill Admin. Code § 226.75 and 23 Ill. Admin. Code §226.750. The 7th Circuit in *Todd v. Duneland School Corp* cited the Department of Education's comments found in the Federal Register as providing some criteria for the student's IEP team to consider when making ESY determinations. *Todd v. Duneland School Corp.*, 36 IDELR 151 (7th Cir. 2002) citing 64 Fed. Reg. 12406, 12576 (March 12, 1999). This criterion includes the likelihood of regression, slow recoupment, and predictive data based upon the opinion of professionals. *Id.*

Parent alleges that the IEP teams failed to consider whether Student needed ESY during the IEP meetings convened on April 7, 2017, August 25, 2017, and/or April 5, 2018 and that this failure resulted in a denial of a FAPE. District contends that Parent failed to meet her burden of proof. District argues that Parent did not demonstrate Student needed ESY services for a FAPE.

April 7, 2017 IEP

Parent contends that because Student was provided ESY services in 2015 and 2016 he should have been eligible to receive those services during the 2017 and 2018 summer break periods as well. IDEA and Illinois School Code both require that IEPs are developed at least annually for each student with disabilities. 34 C.F.R. §300.324(b) and 23 Ill. Admin. Code §226.220. The District is required to determine student needs and develop programs to address those needs at least annually, therefore, prior eligibility for ESY service does not automatically confer on a student ongoing eligibility for ESY services. That determination should be made at least annually, based on a student's current needs. Here, the District did

just that, made the determination that Student did not need ESY services at the annual reviews of the IEPs on April 7, 2017 and April 5, 2018. (FF # 21 & FF# 47.)

Parent contends that the District was required to provide a detailed explanation concerning ESY eligibility in the ESY section of each of IEPs. District practice is to provide a detailed explanation in the ESY section when a student is found eligible for ESY services. (FF #9.) IDEA does not require a detailed explanation concerning ESY eligibility be provided in the IEP document. 34 C.F.R. §300.320 to 34 C.F.R. §300.324. Illinois requires a statement as to whether the student requires ESY services to receive a FAPE, however, a description is required only when ESY services are required. 23 Ill. Admin. Code §226.230(a)(4). Here, the District's April 7, 2017, and April 5, 2018 IEPs each contain a statement that Student did not need ESY services. (FF # 21, and FF # 47.)

Parent contends that Student's need for ESY services arise from his slow starts at the beginning of the year and that he doesn't catch up until early spring. Parent contends that the District failed to consider Student's special circumstances (i.e. that initially he was attending the Middle School half-day and academic instruction was lacking during the first half of the day). After transition, Parent contends that the District knew Student was struggling academically and behaviorally as support for his need for ESY services. District asserts that Student did not exhibit more than typical regression and recoupment time and Student met the academic, study skills, and behavioral expectations.

Parent and Student testified that Student struggled academically and behaviorally after he began attending Middle School full-time, his teachers testified that he adjusted well academically and behaviorally before the end of the term. Student's grades and behavior monitoring demonstrated that Student's academic performance was generally good, passing

all but one class third trimester, and that due to missing assignments (JE 8-130) and that he made steady progress on his behavioral goals. (FF#14,16, & 17.) While Student may have struggled, he largely experienced success in academic and behavior during the final trimester of his 7th grade year.

Parent argued that the change in ESY eligibility was not done until April, implying that it was made abruptly and untimely. District argued it considered ESY appropriately, at least annually.

IDEA does not specify a date for the determination of the need for ESY services. Determinations should be made at least annually and should be done in a timely manner. *Pachl v School Board of Independent School District No. 11*, 42 IDELR 264. The court in *Pachl* reasoned that because the purpose of ESY services is to prevent regression and recoupment problems it was reasonable for the IEP team to defer its ESY decision until spring to determine the specific services the student would need as ESY services to maintain the skills the student had learned during the school year. *Id.* Here, the April 7, 2017 was an annual review of the Student's IEP, near the summer break and it was an appropriate time for the determination of Student's need for ESY services.

The team considered and found there was no evidence of regression, there was evidence of progress academically and behaviorally and the members of the team held a reasonable belief that Student's performance did not support the need for ESY services at the time of the April 7, 2017 IEP meeting. The preponderance of the evidence shows that the IEP team considered whether Student needed ESY services during the April 7, 2017 IEP meeting.

August 25, 2017

Parent asserts that the District did not consider ESY services during the August 25, 2017 IEP meeting. District argues that this meeting was convened for the purpose of consideration of an evaluation completed by an outside evaluator as ordered by a prior hearing officer. District asserts that the team reviewed the evaluation, considered Student's IEP in light of the evaluation information and determined that no changes were needed to the IEP, which included ESY services.

The IEP team did not specifically discuss ESY services for the Student at this meeting. (FF# 31.) The academic and cognitive evaluation data did not demonstrate a need for ESY services. (FF# 29, FF# 32.) Testimony and IEP notes indicate that this meeting ended abruptly due to a dispute concerning the possibility that the conference was being recorded. (FF# 30.) None of the District team members who testified at the hearing felt that the termination of the meeting after reviewing the evaluation and IEP created a problem for Student as it was early in the academic year, there was no recent evidence of regression and there were several school breaks and Student data would be monitored throughout the year. (FF#31.)

As stated above, there is no date by which the ESY services determination is made. It must be made annually. The Student's annual review was completed in April 2017, so the next annual review was not due in August 2017 but would be due in April 2018. While this meeting ended abruptly, there was no apparent need to note the consideration of ESY specifically as the team considered the IEP and the evaluation and Student was not showing signs of atypical regression or recoupment.

The IEP under consideration at the August 25, 2017 IEP meeting was the April 7, 2017 IEP. The August 25, 2017 IEP was developed to address Student's need for behavioral and social support primarily in the general education setting. It contained behavioral goals, to be implemented by the social worker and a behavior plan. (JE 4.) The recent evaluation, completed by an outside evaluator, indicated that Students academic and cognitive ability and achievement were consistent with one another and were in the average to high average range. The team considered Student's IEP and determined that no changes were needed. (FF#29.)

Here, the evidence also shows that Student's performance did not support the need for ESY services at the time of the August 25, 2017 IEP meeting. (FF#29.) School had recently begun⁵ and as a result new behavior data was very limited. Student had successfully completed 7th grade before the summer break. Accordingly, there was no reason for the team to believe that Student would be unable to progress toward the mastery of his IEP goals and/or to make appropriate academic gains without the provision of ESY services during the coming school breaks. The evaluation results supported the academic appropriateness of the IEP program and no new behavior or social needs were presented by parent or the team. It was reasonable to forego this discussion until the annual review which was due in April 2018.

Parent did not present evidence of Student's need for ESY services at that time.

The evidence shows that the team did not specifically consider Student's need for ESY services during the August 25, 2017 IEP meeting. Procedural flaws do not require a

⁵ School had been in session for six days at the time of this meeting. (JE 14.)

finding of the denial of a FAPE, they must result in the loss of educational opportunity to be a denial of FAPE. *Hjortness v Neenah Joint School District*, 107 LRP 65900 (7th Cir. 2007).

As stated above, the IDEA does not require the determination of ESY service need at every IEP meeting. The August 25, 2017 IEP, which did not modify the April 7, 2017 IEP, was reasonably calculated to enable Student to make progress academically, behaviorally, and socially. Therefore, the team's failure to specifically consider ESY services did not result in a denial of FAPE to Student.

If the failure to consider ESY is considered a procedural violation, it must also have impeded Student's right to a FAPE or significantly impeded the parent's opportunity to participate in the decision-making regarding the provision of FAPE. 34 C.F.R. §300.513. As discussed above, the failure to consider ESY at the August 25, 2017 IEP meeting did not result in a denial of a FAPE to Student. Next, consideration must be given to whether this violation impeded Parent's participation.

The IDEA assures that parents are active participants with a meaningful role in the development or modification of their child's IEP. *Hjortness v. Neenah Joint Sch. Dist.*, 507 F.3d 1060, 107 LRP 65900, 48 IDELR 119 (7th Cir. 2007). Evidence shows that Parent attended the IEP meeting, asked questions and responded to information presented by the team. (FF #28, JE 4 – 81 to 82.) Unfortunately, Parent and a District Team member also engaged in conflict which caused an abrupt end to the meeting. (FF#28 and FF# 30.) There is no evidence that Parent's opportunity to participate in educational decision-making concerning Student's receipt of a FAPE during this meeting was in any way impeded other than to abruptly end the meeting. Therefore, the team's failure to specifically consider ESY

services did not result in a significant impediment to Parent's participation in educational decision regarding the provision of FAPE.

April 5, 2018

Parent asserted that the District's ESY determination was based on the consideration of a single disability. District asserts that the IEP team determinations of ESY service eligibility for Student were made on multi-factor consideration, but even if they were not, the determination for ESY services can be based on only one factor. *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46582.

On this date, the IEP team completed a comprehensive reviewed Student's progress on toward his IEP goal, academic progress, recent test scores, staffing notes, behavior monitoring reports, behavior reports and discussed his transition to high school. (FF#45.) The team developed an IEP and specifically addressed ESY services. The team found that Student's performance did not support the need for ESY services. He was progressing academically in the general education curriculum and was making steady behavioral/social progress. No evidence of regression was available to the team. In addition, Parent's disagreement with the ESY decision was noted in IEP notes. (FF# 48.)^{6 7}

⁶ Parent testified that Student needs ESY services for his success and that in past, the entire team agreed with her. Parent feels that Student needs to be structured and supervised, not just hanging out during the summer break. Parent believes that Student's behavioral needs and social skills are an ongoing job and that as a result, ESY services should be provided to allow him to practice the behavioral and social skills during the summer. In addition, Parent feels that Student needed to work with the social worker during the summer to increase his self-control and balanced participation and to focus on the behaviors that happened outside of the classroom.

⁷ Parent asserted during the hearing that ESY was removed in retaliation for the prior due process complaint. Parent also asserted that it was in retaliation due to the breakdown in her relationship with the Prior Director of Student Services, but she did not present any evidence in support of this assertion. This issue was not certified for hearing during the prehearing conference and therefore, it is not being addressed as a separate issue in this decision.

The preponderance of the evidence shows that the IEP team considered whether Student needed ESY services during the April 5, 2018 IEP meeting. There was no evidence of regression, there was evidence of progress academically and behaviorally and the members of the team held a reasonable belief that Student's performance did not support the need for ESY services at the time of the April 5, 2018 IEP meeting. Evidence in this matter does not support the Parent's allegation that ESY services were not considered during the April 5, 2018 meeting.

Issue Two: Whether the District's April 5, 2018 IEP meetings team composition complied with IDEA requirements? If not, did this result in the denial of a FAPE to Student?

The school district is charged with the responsibility to assure that the IEP team for students with disabilities includes the parents, not less than one regular education teacher of the child, not less than one special education teacher or special education provider, a representative of the district also known as the LEA Representative (who is qualified to provide or supervise the provision of specially designed instruction designed to meet the unique needs of children with disabilities, is knowledgeable about general education curriculum, and is knowledgeable about the availability of resources of the district), and if evaluations are being considered someone who can interpret the instructional implications of evaluation results. The parent and district have discretion to include other individuals who know knowledge or special expertise regarding the child, including related services personnel, as appropriate. 34 C.F.R. §300.321(a). Illinois regulations additionally require that the general education teacher is a teacher who is or may be responsible for implementing a portion of the IEP, that the LEA Representative shall have the authority to make commitments for the provision of resources and be able to insure that the IEP will be

implemented, and that in the case of a child with behaviors that interfere with his/her learning a person on the team should have knowledge about positive behavior strategies. 23 Ill. Admin. Code §226.210(a), (d), and (f).

Here, the IEP containing the educational programming that was in place for Student prior to the April 5, 2018 meeting was the April 7, 2017 IEP (JE 2). The April 7, 2017 IEP indicates that Student was receiving 40 minutes per week of social work services outside of the general education classroom and all academics in the general education setting with accommodations and supplementary aids, (JE 2-62.) social work goals (Je 2-52 to 55) and a behavior plan (JE 2-74 to 76.) Accordingly, the District was required to provide an IEP team for Student for the April 5, 2018 IEP meeting that included parent, student, general education teacher, special education teacher, social worker, and LEA Representative. The District provided the required participants. (FF# 44.)

When students with IEPs transfer between school districts within the same state the IEP that was in effect at the time of the transfer must be implemented by the receiving school district to provide FAPE to the child, including comparable services, until the receiving district either adopts the transferred IEP or develops a new IEP. 34 C.F.R. §300.323(e). In Illinois elementary school districts have the duty to notify the high school district in which the student resides of the student's current eligibility for special education services, the student's current program and of all evaluation data upon which the current program is based upon the student achieving the age of 14 ½ years. 105 ILCS 5/14-6.01.

The District attempted to schedule this meeting in January⁸, but for various reasons the meeting did not occur until April 5, 2018 when it was combined with the Student's

⁸ Student turned 14 ½ years of age on January 7, 2018. (FF #1.)

annual review of the IEP. (FF # 45.) In response to these circumstances, the District invited members of the District [REDACTED] special education team to the April 5, 2018 meeting. (JE7-219.) District [REDACTED] team members, including the Special Education Department Chair, Case Manager/Special Education Teacher, Social Worker, and Counselor participated in the April 5, 2018 meeting. (FF#45 and JE7-191.) In addition, during her own testimony, Parent was asked what team member was missing from the sign-in sheet for this meeting. Parent responded none.

The preponderance of the evidence demonstrates that the District's April 5, 2018 IEP team composition complied with the requirements for an IEP team completing an annual review of an IEP and served the requirements of the Illinois School Code requiring elementary district to notify the receiving high school district of Student's current eligibility, program, and of all evaluation data upon which the current program is based. Therefore, because the team composition did not violate the IDEA or Illinois School Code requirements there was no resulting violation of FAPE.

Issue Three: Whether the District predetermined the outcome of the April 5, 2018 IEP meeting for Student with respect to ESY services, thereby denying Parent's right to participate in educational decision making for Student? If so, did this result in the denial of a FAPE to Student?

Parent asserts the outcome of the April 5, 2018 IEP meeting concerning ESY services was predetermined and this resulted in a denial of her right to participate in educational decision making for Student. Parent asserts that the team was directed to deny ESY services by Assistant Principal just prior to her being brought into the meeting. District denied this allegation and asserts that all decisions concerning Student's IEP were made during the

meeting, in which Parent was afforded the opportunity for meaningful participation. In addition, Parent implied during her questioning of witnesses that the provision of draft IEPs and reports a few days prior to the IEP meetings was insufficient (Testimony of Parent) and that this contributed to predetermination and resulted in a denial of her right to participate in Student's educational decision-making.

The IDEA assures that parents are active participants with a meaningful role in the development or modification of their child's IEP. *Hjortness v. Neenah Joint Sch. Dist.*, 507 F.3d 1060, 107 LRP 65900, 48 IDELR 119 (7th Cir. 2007). Parent alleged that the team met with the Assistant Principal in the conference room and that even though he did not participate in the IEP, he dictated the outcome of the IEP with respect to ESY services for Student. Parent asserts that during the time that she was waiting the Assistant Principal was going in and out of the conference room. When she entered the conference room, the Assistant Principal was "ushered" out of the room and the meeting proceeded. Parent came to the conclusion that the Assistant Principal had directed the outcome of the meeting concerning denial of ESY services to Student.

Evidence presented in this matter does not support Parent's conclusion that the ESY decision was predetermined. Upon her arrival, parent was asked by the school secretary to wait while the IEP team assembled in the conference room. The school secretary credibly testified that she usually asked parents to wait in the outer office until the IEP team was ready to begin the meeting. (FF#43.) Team members, including two District ■■■ staff members, testified credibly that there was no discussion of Student prior to the Parent entry into the conference room. (FF#42.) District team members testified credibly that there was no meeting to make decisions for Student prior to the IEP meeting. (FF#53.) The Assistant

Principal testified that he did not recall any conversations concerning Student that day and did not participate in the IEP meeting. Participants in the conference except Parent, recalled a give and take conversation during the IEP meeting. (FF#50) Parent elected to provide her “input” after the presentation of all reports. Parent’s input was recorded in the conference notes. (FF#46.) The record supports that the team made the ESY determination based upon academic, behavioral reports and progress monitoring, assessments and staffing notes as well as discussions during the IEP meeting.

While this was not certified as an issue during the prehearing order, both parties provided evidence and testimony that the District provided Parent with draft IEPs, reports, data and other notes prior to the IEP meetings. (FF#41.) District provides these documents to parents to enable parents to review these documents before the meeting and outside of the meeting setting, to prepare questions and note their concerns to raise at the meeting. (FF#52.)

IDEA regulations specifically provide that informal or unscheduled conversations involving school personnel and the teaching methodology, lesson plans, or coordination of services or preparatory activities that school personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting are not considered a meeting. 34 C.F.R. §300.501(b)(3).

Evidence presented demonstrated that Parent was provided with draft IEP materials and reports in advance of the meeting and that her input was solicited before (P6-38 to 39) and during the meeting (FF # 40, FF# 41, FF#46, FF# 48, FF# 50, and FF#52.)

While parent was suspicious of the conversations of Middle School and District [REDACTED] staff who were gathering in the conference room prior to the IEP meeting and the Assistant

Principal's coming and going during the same time period, there was no evidence of any discussion of Student outside of the presence of the Parent, therefore there was no meeting that resulted in predetermination of the ESY determination for Student during the April 5, 2018 IEP meeting. In addition, there were two pages of notes summarizing Parent's concerns, comments and issues raised during the IEP meeting. (JE 7-217 to 218.)

The preponderance of the evidence presented at hearing does not support a finding that the District predetermined the eligibility of Student for ESY services or significantly impeded Parent's right to participate in educational-decision making concerning ESY services.

ORDER

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

The Parent has not sustained her burden of proof as discussed above, therefore, the District does not need to take any further action in this matter.

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: December 24, 2018

/s/ Kathleen C. Fuhrmann,
Hearing Officer

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APPENDIX A

[REDACTED] v. [REDACTED] Community Consolidated School District No. [REDACTED]
ISBE Case No: 2018-0470

| | |
|---|--------------------------|
| Student | [REDACTED] |
| Middle School | [REDACTED] Middle School |
| High School | [REDACTED] High School |
| Parent/Petitioner | [REDACTED] |
| Student Services Coordinator | [REDACTED] |
| School Psychologist | Dr. [REDACTED] |
| Social Worker | [REDACTED] |
| 7 th Grade Case Manager | [REDACTED] |
| 8 th Grade Social Studies Teacher | [REDACTED] |
| 8 th Grade Case Manager | [REDACTED] |
| 7 th and 8 th Grade Science Teacher | [REDACTED] |
| Director of Student Services | Dr. [REDACTED] |
| Principal | [REDACTED] |
| Assistant Principal | [REDACTED] |
| Retired School Secretary | [REDACTED] |
| District [REDACTED] Social Worker | [REDACTED] |
| District [REDACTED] Special Education Department Chair | [REDACTED] |
| | |

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

█,

Student,

Case No: 2018-0470

v.

Kathleen C. Fuhrmann, Impartial Hearing Officer

█ CCSD █

School District.

CERTIFICATE OF SERVICE VIA CERTIFIED MAIL

I, the undersigned Kathleen C. Fuhrmann, certify that on December 24, 2018, a copy of Final Determination and Order and Decision on Motion for Directed Verdict was served upon the following persons via certified US Mail delivery by depositing the same in the United States Mail, in an envelope securely sealed, postage prepaid, return receipt requested and legibly addressed to the addresses set forth below:

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█
█

Jennifer Mueller and Caitlin Frenzer
Hodges Loizzi Eisenhammer Rodick & Kohn LLP

█
█

Dr. █, Superintendent

█
█
█

Dr. █, Director of Student Services

█
█
█

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

Dated: December 24, 2018

Signed: /s/ Kathleen C. Fuhrmann,

[Redacted signature block]