

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

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Student, <sup>1</sup>

Petitioner/Student,

v.

Case No. 2023-DP-0186

High School District,

Rhonda L. Walker

Respondent/District.

Impartial Hearing Officer

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**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 5/148.02a et seq.

**BACKGROUND**

The student is 15 years old. The events complained of arose during the 2022-2023 school year which was Student's freshman year of high school. Student is eligible for special education and related services due to Other Health Impairments. She has been diagnosed with hypothyroidism, Graves' Disease, Attention Deficit Hyperactivity Disorder ("ADHD"), anxiety and mild hearing loss in her left ear. She uses an assistive device for her hearing loss which is referred to interchangeably as an FM or DM system.

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<sup>1</sup> Personal identifying information for parties and witnesses is contained in Appendix A

The student was born prematurely; as a result, suffers from scarring in her lungs and other respiratory affect.

Parents, by counsel, filed a due process hearing complaint on March 22, 2023. (IHO Exhibit 2) The District responded to the complaint on April 3, 2023. (IHO Exhibit 4)

Parents' counsel filed a Motion to Consolidate this matter with that filed on behalf of Student against the elementary school district she attended<sup>2</sup>. The IHO informed the parties that the Motion to Consolidate would be held in abeyance until prehearing conferences were conducted in each case in order to determine whether the matters were properly susceptible to consolidation. The other matter settled prior to prehearing conference and the Motion to Consolidate was rendered moot.

The parties participated in mediation on May 1, 2023. The mediation was unsuccessful; however, the parties continued to actively engage in settlement discussions. (IHO Exhibit 10) The original 45-day timeline expired on May 31, 2023. (IHO Exhibit 10). On May 30, 2023, the parties jointly requested an extension to continue settlement negotiations. Good cause was found to exist and the 45-day timeline was continued to August 18, 2023. Thereafter, settlement discussions failed. On July 16, 2023, the parties jointly requested an extension of the due process timeline in order to accommodate the hearing dates agreed to by the parties. (See IHO 12) The motion was granted for good cause shown and the 45-day decision due date was continued to September 29, 2023.

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<sup>2</sup> The matter sought to be consolidated with this was 2023 DP 0182.

The Due Process Hearing was held on September 13, 14 and 15<sup>3</sup>. The Parents were represented by Thomas E. Kennedy, III of and Michelle Faron of Kennedy Hunt, P.C. The District was represented by Stephanie Jones and Cassie Black of Kriha Law, L.L.C. The Parties presented individual and joint witnesses<sup>4</sup>

The District Presented the following District Exhibits (DE) # 1-41. The Parents presented the following Parent Exhibits (PE) A, B, C, D, E, F and G. The Parties stipulated to the admission of all evidence with the exception of Parents' Exhibits B and F. Exhibit B was admitted over objection. Exhibit F was withdrawn by the Parents.

Each of the parties presented oral closing statements, with a written outline containing citations provided thereafter. (IHO 20 and 21) The Parties also presented an Agreed Stipulation of Facts. (IHO 19)<sup>5</sup>

IHO did not have the benefit of a transcript and one was not needed. This decision is based on the IHO's personal notes and recollection of the testimony provided at the hearing. In rendering this decision, the IHO considered the documents admitted into evidence, the testimony of the witnesses, the parties' closing arguments, the parties' suggested case law and statutes, as well as the IHO's own independent research.

### **ISSUES AND REQUESTED REMEDIES**

The issues raised by the Parents, over which the IHO has jurisdiction,<sup>6</sup> and District response present the following issues and requested relief for determination by the Hearing Officer:

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<sup>3</sup> The hearing concluded on September 15, 2023. Accordingly, the decision due date is September 29, 2023.

<sup>4</sup> The joint witnesses are considered those which appeared on both the Petitioner and Respondent's witness lists. (See IHO Exhibits 14 and 15)

<sup>5</sup> The Agreed Stipulation of Facts in the record (IHO 19) is unsigned; however, it was presented by District counsel in an email to the IHO and the assent of Parents' counsel was also indicated by email. (See IHO Exhibit, 22, emails exchanged between the parties and the IHO on September 12, 2023)

<sup>6</sup> Parent's request a determination of whether the District violated Title II of the Americans with Disabilities Act, 42 U.S. C. §12132, 34 C.F.R §35.130, the Illinois Human Rights Act, 775 ILCS 5/1-101, and Section 504 of the Rehabilitation Act, 29 U.S.C sec. 794(a). The IHO has no jurisdiction to make determinations under these Acts.

1. Whether there was a delay at the beginning of the 2022-2023 school year in providing the student with a DM system as required by her IEP and if so, did this delay result in the denial of FAPE.

The district denies that there was a significant delay in providing the student a DM system, stating that the school year began on or about August 15, 2023 and the DM system was in place by the end of August, 2023.<sup>7</sup>

2. Did the District unilaterally alter the terms of the Student's 2022-23 IEP by:

a. Allowing the Student's math instructor to refuse to wear the microphone portion of the DM system and complaining about its use to Student in front the class, causing the Student increased anxiety and academic regression.

b. Not properly training the Student's instructors in the use of the DM system prior to the start of the school year.

c. Failing to allow the student to use a calculator during testing.

d. Requiring the student to pick up the DM system in the office of the school nurse at the beginning of each school day, causing her to be late to class;

e. Requiring the Student to participate in certain gym activities that were contrary to her IEP due to her lung damage, and then giving the student failing grades for activities that she was physically unable to perform.

The District denies each of the allegations, stating that their witnesses will refute each and every claim made by the Parents.

3. Did the District's actions cause the Student to experience new and/or increased anxiety and require the use of new and/or increased dosages of anti-anxiety medications as well as to suffer diminished math grades, and an overall lower grade point average thus jeopardizing her admission to college and receipt of scholarship assistance.

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Counsel for the Parents states that these claims are included in the complaint for the specific purpose of preservation of the issues only. (See IHO Exhibit 16)

<sup>7</sup> The dates stated in the issues statement in this paragraph are incorrect; correct dates are referred to in the findings of fact contained in this decision.

The District denies that they caused any of the above stating that the Student was placed in an advanced math class based on the data they had which was minimal in that the Student had been home-schooled during eight grade which was the 2021-2022 school year, and that they were not certain that this was the appropriate track for her.

The student, by her parents, seeks the following relief:

- a. Compensatory services to allow student to return to an advanced placement track;
- b. District compliance in the use of the DM system;
- c. Overall District compliance with the Student's IEP.

The district seeks a finding on all issues in dispute and consequently, a finding that the student was not denied a FAPE.

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

The Hearing Officer has considered the parties stipulated facts, the testimony of all witnesses presented and the admitted evidence whether or not it is specifically referred to in the final decision. The parties have set forth stipulated facts, stipulated to on the record, which are incorporated into the findings of fact herein where found relevant. The Hearing Officer's Findings of Fact are as follows:

1. The student is 15 years old and is a high school sophomore. The District serves students in 9th through 12th grade. Ninth grade students attend the District's [REDACTED]. Tenth through Twelfth grade students attend classes at the [REDACTED]. (IHO Exhibit 19)<sup>8</sup> The first day of the school year for the 2022-2023 school year was August 11, 2022 (Testimony of Student, DE 27)

2. Student is eligible for special education and related services due to Other Health Impairments. She is diagnosed with hypothyroidism, Graves' Disease, Attention Deficit Hyperactivity Disorder ("ADHD"), anxiety and mild hearing loss in her left ear. (IHO Ex. 19, Testimony of Student). Parent states that Student's anxiety results in her catastrophizing. As a

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<sup>8</sup> IHO Exhibit 19 is the Stipulation of Facts between the parties.

result, a small problem becomes much bigger to her. (Testimony of Parent [REDACTED] Parent also states that Student perseverates, thinking about issues over and over. (Testimony of Parent [REDACTED]

3. The Student and her Parents state that student has test anxiety. (Testimony of Parents [REDACTED] and [REDACTED] Student's IEP allows her extra time to take tests. (Testimony of Student, Parents [REDACTED] and [REDACTED]

4. The Student was born prematurely. The effects of her prematurity include lung scarring and bronchial pulmonary dysplasia. (Testimony of Parent, [REDACTED] She continues to have what are described as lung issues. (Testimony of Parent, [REDACTED]

5. The Student was first diagnosed with Graves' Disease when she was 12 years old. (Testimony of Parent [REDACTED] Graves' Disease causes Student to experience heat and cold in a non-normative way. It is described by the Student as causing her to experience sweating, irregular heartbeat and hand trembling. (Testimony of Student) During hot weather, 80 degrees feels much worse for her than someone without Graves' Disease. (Testimony of Student)

6. The Student has slight hearing loss in the left ear. (District. Ex. 3, pg.40) She does not wear personal hearing aids but does use a DM system to help her in the classroom environment. (Testimony of [REDACTED]<sup>9</sup> Student's most recent audiology evaluation is dated September 11, 2019 and discloses that in a noisy environment, Student understands 28% of spoken words on the right and 36% of spoken words on the left. (PE C)

7. The DM system is used to help students with hearing impairment overcome distance, as well as general and reverberated noise in the classroom. (Testimony of [REDACTED] The use of the DM system involves the Student wearing receivers in their ears with a microphone worn by the teacher. (Testimony of [REDACTED] While the receivers do look like hearing aids but they do not amplify anything other than what is heard in the microphone. (Testimony of [REDACTED]

8. Parents notified the District of Student's intended enrollment in the District in March of 2022. (IHO Exhibit 19) Student was enrolled in July of 2022 for the 2022-2023 school year.. (Testimony of [REDACTED]<sup>10</sup>)

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<sup>9</sup> [REDACTED] is the district audiologist. She has been employed as such for 11 years. She holds an M.A. in audiology.

<sup>10</sup> [REDACTED] is the Director of Special Services for the District. She holds an MA in education administration.

9. The student was educated in a primary school district through 7th grade. Her 7th grade schooling was conducted remotely due to the Covid-19 pandemic. (Testimony of Parent ■■■) In 8th grade, for the 2021-2022 school year, Student was home schooled based upon medical advice received regarding Student's respiratory issues and continuing Covid-19 concerns. (IHO Exhibit 19, Testimony of Parent, ■■■)

10. Parent ■■■ was provided the name of the curriculum coordinator for her 8<sup>th</sup> grade school district who sent a spreadsheet with the entire curriculum including a list of all books used. (Testimony of Parent ■■■ Parent ■■■ used that so as to teach Student that year's school curriculum.<sup>11</sup> (Testimony of Parent ■■■)

11.. The District received notice of the student's intended enrollment in mid-March 2022 and an IEP team meeting was held on March 28, 2022. (IHO Exhibit 19)

12. Based on the March 28, 2022 IEP, Student's educational placement for the 2022-23 school year was in the general education program with supplementary aids and services including 275 weekly minutes of special education instruction in Resource Study Skills outside of the general education classroom. (IHO Exhibit 19)

13. The March 28, 2022 IEP entitled student to 15 minutes of audiology services per semester as 15 minutes per quarter of Social Work services. Supplementary Aids related to her hearing loss were preferential seating in the classroom near the teacher with her right ear toward the microphone along with use of the DM system. (IHO 19) Her Educational accommodations included extended time for graded tasks or tests as needed, alternate location to take tests and quizzes as needed, use of noise cancelling headphones provided by parent, additional time between passing periods in order to take care of her DM system as needed, use of a calculator, scheduling of math in the morning and adaptations in PE as needed due to Graves Disease which was specified as the ability to drink water as needed to address symptoms. (DE 3, pg. 50) One of Student's goals was to identify factors that create stress and affect successful performance in school. (DE 3)

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<sup>11</sup> The District correctly attorney points out that 8<sup>th</sup> grade was in another district.

14. District students must receive three (3) math credits to graduate from high school, including one year of Algebra 1 and one year of a Geometry course. (IHO 19) Students who complete a full-year Advanced Algebra 1 course typically matriculate to Advanced Geometry the following year. Students who complete Introduction to Algebra typically matriculate to Geometry with Algebra the following year although students who complete Introduction to Algebra may opt to take Advanced Geometry. (IHO Exhibit 19) This is based on District procedure that allows students to take any classes within the progression of the curriculum as long as the parent acknowledges that it is against the District's recommendation. (IHO Exhibit 19) The Advanced Algebra class covers the material for Algebra 1 in the first year. The Intro to Algebra course covers that material over the course of two years. (Testimony of ██████)

15. At the March 2022 IEP meeting, the IEP team determined that O.P.'s math placement should be Introduction to Algebra which was noted on the IEP as algebra 1 (IHO Exhibit 19)

16. Parent ██████ inquired as to what the names of the algebra classes were. (Testimony of Parent ██████ Parent wanted Student to be in what she described as a "regular class" (Testimony of Parent ██████ ) Parent did not want student doing introductory work as she had done the basics during home schooling (Testimony of Parent ██████ Parent communicated these thoughts to the school guidance counselor who explained that the only algebra classes were introduction to algebra and advanced algebra.(Testimony of Parent ██████ Parent Exhibit A) Parents decided to leave Student in advanced class because it was, to her understanding, introductory algebra and Student had already finished the 8th grade book. (Testimony of Parent ██████)

17. ██████<sup>13</sup> was the Associate Director of Special Services during the 2022-2023 school year. She handled transition meetings for students in middle school progressing to high school who have special education services.(Testimony of ██████ She is familiar with the Student and attended her IEP meetings. (Testimony of ██████ received an email from ██████ during summer requesting a change to Student's math class (Testimony of ██████ DE 11). After an email exchange

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<sup>12</sup> ██████ is a District math teacher with 17 years of experience. He holds an MA in math and administration.

<sup>13</sup> K.C. holds an MA in special education administration and a doctorate in teaching and learning. Because there is another witness with the same initials testifying in this matter, this witness is randomly assigned the initials ██████ for use in this decision.

and discussions with Student's guidance counselor, the Student's math class was changed to Advanced Algebra. (Testimony of ■■■ DE 16)

18. The District audiologist, ■■■ is responsible is responsible for ordering audiology equipment, training and providing troubleshooting assistance, among her other duties. (Testimony of ■■■ ■■■)

19. The Student's DM system was ordered in July, 2022 which is a typical time frame for doing so as it would typically arrive within one to two weeks from the order date. (Testimony of ■■■ They order in July as this is when enrollment occurs and they know which families are enrolling for certain. (Testimony of ■■■ ■■■ The student's DM system took longer than normal to arrive due to what she understood was the back order of a part. (Testimony of ■■■ ■■■)

20. The DM System arrived on August 15 2022. On August 19, 2022, the audiologist fitted the equipment to the student at the school, showed the student how to use it, charge the batteries and perform other maintenance including cleaning of an item called a slim tube. (Testimony of ■■■ Ex. 8, pg. 101) The Student received the DM system on August 22, 2022. (Testimony of Student)

21. The audiologist does not provide direct training to the staff on DM System Use as there is essentially no training required. (Testimony of ■■■ She emailed all the teachers about the use of the system and does a quarterly check in to see if they need anything from her. (Testimony of K., D.E. 6 at 94)

22. The DM system works if placed on a desk or table; it has a tabletop mode. (Testimony of ■■■ It will pick up noise in the classroom. (Testimony of ■■■ Olivia has difficulty in understanding speech if there is other noise in the classroom. (PE C)

24. Student's DM system was stored in a desk drawer in the school nurses office (Testimony of ■■■<sup>14</sup> It is more complicated in high school to find a good place to store the DM system (Testimony of ■■■ It cannot be stored in a locker because it must be charged overnight. (Testimony of ■■■ It is difficult to keep in a classroom in that, unlike elementary school, the students cycle in and out of the rooms and therefore retrieving the system or supplies could potentially disturb a class in session. (Testimony of ■■■)

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<sup>14</sup> ■■■ is the school nurse. She has been a registered nurse for 16 years.

25. It was determined to keep the DM System in the school nurse's office as it is next door to the first class where the Student needed the use of the system. (Testimony of ■■■ ■■■ ■■■) It was stored in a vacant desk six feet from the door adjacent to a plug for ease in charging. (Testimony of ■■■)

26. The Student walked into the office approximately 6 feet, retrieved the system and walked out to go to class. (Testimony of ■■■) While there is a scan in and out procedure for the nurses office; Student did not need to scan in to retrieve the DM System with the exception of her needing to charge batteries during the day or if she had asked a teacher for a pass to leave to attend to the DM System. (Testimony of ■■■)

27. The nurse would give Student a pass if she was late to class due to maintenance of the DM System. (Testimony of ■■■) The nurse's log indicates three instances of providing Student a pass due to system maintenance. (Testimony of ■■■) None of these instances were prior to her first period Advanced Algebra class. (Testimony of ■■■)

28. The nurse did not see Olivia for Anxiety. (See Testimony of ■■■) On September 7, 2022, the nurse has a record of Olivia suffering from overheating during physical education class as the result of playing kickball (Testimony of ■■■ DE 20 at 144) The Parents were called and they picked the Student up. (Testimony of ■■■)

29. On September 8, 2022, the Director of Special Education met with the Parents to discuss Student's needs in physical education and a tardy she had received. (Testimony of ■■■) The meeting was precipitated by the Parents' expressed concern over Student's reports of receiving tardy marks in connection with retrieving her DM System and her needs in physical education class relative to her Graves' disease. (Testimony of ■■■ IHO 19) . On September 10, 2022, the attendance secretary for the school was asked to remove this tardy from Student's record which related to retrieval of the DM System and she confirmed that this had been accomplished by email on September 12, 2022 (Testimony of ■■■ DE 7)

30. The Physical Education (PE) teacher<sup>15</sup> described the daily schedule stating that part of the student grade is awarded for participation. (Testimony of ■■■) Students earn participation points daily which are a portion of the student's grade. (Testimony of ■■■) The PE

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<sup>15</sup> ■■■ has been a physical education teacher for 21 years. She holds an M.A. from William Woods University.

teacher provides the students with written guidelines for the class which describe the grading procedures, her expectations and the points earned for various activities. (DE 41, pg. 362)

31. In those guidelines, the PE teacher provides make up procedures for absences. (Testimony of ■■■ DE 41, pg. 362) Students have the entire semester to perform make ups. (Testimony of ■■■ This is communicated to students periodically and to their families when she sends reports. (Testimony of ■■■

32. At the beginning of the year, the physical education teacher was aware of Student's March 28, 2022 IEP providing student the accommodation of having access to water in her class. (Testimony of ■■■

33. The PE teacher received an email from Parent ■■■ after sending Student's first progress report because it reflected a deduction of 4 points for participation. (Testimony of ■■■ These points had been deducted due to Student's failure to participate in jogging exercises. (Testimony of ■■■ The PE teacher asked Student why she did not jog and was told she did not want to. (Testimony of ■■■ The Parent explained Student's Graves' Disease and that it rendered her unable to participate in certain activities at times. (Testimony of ■■■

34. On September 9, 2022, with consent of the Parents, the District amended the Student's IEP accommodations in physical education to provide for alternative PE activities as necessary with consideration of the symptoms of Student's Graves' disease. (IHO 19) Written notice of the change was provided to the Parents. (IHO 19)

35. Any of the Student's grades which were reduced for participation when she was present in class were corrected. (Testimony of ■■■ ■■■ DE34) The student's progress report now reflects 10/10 participation points except for days when she was absent and did not perform the makeup assignment. (DE Ex. 33, 35; Testimony of ■■■

36. On November 1, 2022, Student's Advanced Algebra Teacher, ■■■ replied to the audiologists quarterly check in email, stating that the Student has not had the DM system with in class for the last week or so. (Testimony of ■■■ DE 6 at 94) The other teachers report that there were no problems in use or that the Student is not using the system in their respective classes. (DE 6 at 94 – 98)

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<sup>16</sup> ■■■ holds an MA in math education.

37. On November 7, 2022, Student is documented to have reported to the school nurse that she was having trouble with her DM System connecting. At that time, Student called her mother and asked her to call the audiologist. (DE 156)

38. The audiologist responded with troubleshooting guidance, including to clean the slim tubes, and offered to assist further if needed. (IHO 19, DE 5, Testimony of ■■■ She does not know how long the equipment was inoperable prior to that day. (Testimony of ■■■

39. The quarterly check with the teachers by the audiologist disclosed that several teachers said they felt, or Student reported, that she did not need the DM System or could hear without it. (DE Ex. 6) This is not uncommon with high school students as they determine where they are having the most difficulty and use the DM System in those classes. (Testimony of ■■■

40. ■■■ is Student's Resource Study Skills teacher. (Testimony of ■■■ She wore the DM System in class; however it clinks against things so she asks students if they care if she puts it on the podium. Student said this was fine. (Testimony of ■■■ She did not have training on the DM system as she did not need it, although she has had training on it in the past. (Testimony of ■■■

41. The IEP team convened for the Student's annual review on November 10, 2022. (Testimony of ■■■ ■■■ The IEP contains notes that the parents are happy with Student's progress. Parent ■■■ testifies that they raised issues Student was having with her Advanced Algebra teacher at that meeting. (Testimony of Parent ■■■

42. The Director of Special Education attended the November, 2022 IEP meeting. (Testimony of T.S, ■■■ . There was no discussion of Student's Graves' disease or increased anxiety at the meeting; however, the parents did raise moving student into another advanced algebra class. (Testimony of ■■■ ■■■ The parents did not indicate that the change request was related to Student's disability but rather, that Student was struggling with personality conflict with the her math teacher. (Testimony of ■■■ At that time, the parents were encouraged to get to the bottom of what the actual issue was and see if they could make the relationship grow. (Testimony of ■■■

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<sup>17</sup> ■■■ has been a special education teacher for seven years.

43. The Parents' change of class request was precipitated by Student reporting that her math teacher refused to wear the DM System and berated Student in front of the class over having to wear it. (Testimony of Student, Parents ■ and ■) Additionally, Student maintains that the math teacher slammed books on the desk and threatened the entire class with pink slips for failure to complete homework. (Testimony of Student, Parents ■ and ■)

44. Student and her Parents state that Student's math teacher made her anxious. (Testimony of Student, Parents ■ and ■) The Parents allege that Student lost her appetite, lost weight and was more anxious resulting in the addition of a new anxiety medication, all due to her experiences in advanced algebra. (Testimony of Parents ■ and ■)

45. The District uses an online program called Blackboard which allows students and teachers to post items such as class information and homework. (Testimony of ■) Student's Advanced Algebra teacher uses a program in her math classes called One Note so that the Students can see everything she writes in class. (Testimony of ■) She posts these notes on Blackboard so her students can see the problems they did in class. (Testimony of ■) She also posts recordings of each lesson on Blackboard (Testimony of ■) In this way, if a student misses a class, or wants to review, they can watch the class online. (Testimony of ■)

46. During first semester, she discussed concerns the Parent ■ expressed to her regarding the threat of pink slips and use of the DM System (Testimony of ■) She explained the pink slip comment was directed at the entire class as many first hour students were not completing their homework. (Testimony of ■) She was shocked to learn that Student thought this was directed at her, and she explained that this was motivational and not directed to Student; she apologized for this. (Testimony of ■) During this conversation, she and Parent ■ also discussed that first semester Advanced Algebra was a review and that second semester was more difficult. (Testimony of ■) She expressed that it might be an issue for Student to remain in Advanced Algebra second semester as Student struggled with quizzes and testing. (Testimony of ■) She was concerned that Student's hard work would not be reflected in her grades as her grades indicated that she might not be able to handle second semester in the advanced class. (Testimony of ■)

47. ■ states that she wore the DM system in class and did not refuse to wear it; she asked the Student if she could place it on the podium when her neck was hurting and Student declined this so she wore it around her neck. (Testimony of ■ She occasionally forgot to turn it off after lecturing and Olivia would come over and turn the button off (Testimony of ■ Otherwise, after lecturing, she would take it off and put it on the desk while she worked with students individually.. (Testimony of ■ She occasionally forgot to wear it during the last few minutes when wrapping up class after individualized work period. (Testimony of ■

48. During second semester, beginning in January, 2023, Student was struggling in class. (Testimony of ■ On February 14, 2023, there was a meeting with both parents and Student was present with Dr. Coley. (Testimony of ■ The meeting was convened as mother had concerns over Student's progress in class, her math teacher's strategies and overall concern with her math teacher. (Testimony of ■ ■ thought the meeting was unproductive as she had hoped they would talk about Student's struggles with the new material being presented that semester. (Testimony of ■ Student's math teacher stated that she has taught student's with math anxiety and despite Student's testing accommodation, she still failed quizzes and tests. (Testimony of ■ In her opinion, Student had not mastered the material and the best placement for her was in Intro to Algebra. (Testimony of ■ It is not unusual for student's to move levels and there is no specific time frame for this. (Testimony of ■

49. Parents made a request at that meeting to move Student to an advanced Algebra Class with a different teacher; that request was rejected. (IHO Exhibit 19) The rejection was based on District policy of not allowing a lateral class change, citing that this is most often based on personality differences. (Testimony of ■ ■ explained that it is the district practice to not allow teacher change; they want students to build ■ relationship skills and work through any difficulty they are having. (Testimony of ■ They need to learn conflict management. (Testimony of ■

50. During the meeting, it was clear Student did not like ■ but it was not clear that she was afraid of her. (Testimony of ■ The Student expressed that did not like the her math teacher and how she taught in discussion with other students. (Testimony of ■ It was also stated that she referred to ■ disrespectfully. (Testimony of ■ Parent ■ The Parents did not

ask to change teachers as an accommodation to Student. (Testimony of ■■■ It was apparent it was due to a personality conflict and they had a specific teacher in mind. (See Testimony of ■■■ If a student with a disability needs to change a teacher related to an accommodation, it would be discussed but the specific teacher would not be tied to this. (Testimony of ■■■ it is the District's practice to assign staff; the parents do not choose (Testimony of ■■■

51. On January 13, 2023, Parent ■■■ sent an email to Student's Guidance Counselor EG and to ■■■ stating

“■■■ was somehow put in Advanced Algebra to begin with and she has struggled with the class. I have helped her with her homework repeatedly and helped her study for quizzes and tests and she continues to struggle. I have spoken with ■■■ and she says that ■■■ does well in class, participates and seems to know the material but then scores poorly on the tests and quizzes. This has been a repeated pattern since 4<sup>th</sup> grade and with her that has progressively gotten worse. For some reason, Math causes her a significant amount of anxiety once she is tested on the material, no matter how well she knows it. Olivia was out sick a lot last semester, so we were hoping that it would be better starting a new semester. She texted me this morning saying that she did poorly on her quiz she took yesterday. ■■■ does not wish to pursue a degree after high school that requires a lot of Math. She wants to be a Graphic Designer, so she will be seeking a Bachelor of Arts degree. Is it possible to move her down to a regular Algebra class vs. the Advanced Algebra to help alleviate some of the stress off of her for this semester.”

(DE 12at 117)

52. Student complains of being deprived of the use of a calculator during testing. This arises out of taking of the PSAT9 which is taken by all 9<sup>th</sup> grade students (Testimony of ■■■ It is offered as a way for students to get used to the PSAT and to project where they may need help. (Testimony of ■■■ The PSAT9 is not used on college applications nor is it made part of the student transcript. (Testimony of ■■■

53.. An email was sent to Student regarding her accommodations for the PSAT9. (Testimony of ■■■ DE 32) The email explains that a four function calculator only would be allowed on certain portions of the test. (Testimony of ■■■ DE 32) The test is administered by the testing agency, not the District. (Testimony of ■■■ The proctor checked the calculators and students who brought a scientific calculator could not use that on the portion of the test that allowed a four function calculator only. (Testimony of ■■■

54. During the first semester of her 9th-grade year, the student had a 2.934 GPA with individual grades of A and B grades with the exception of Advanced Algebra where she earned a C-. (IHO Exhibit 19)

55. [REDACTED] a math teacher for District states he is familiar with the math placement process; it is usually based on test scores and teacher recommendation. (Testimony of [REDACTED] It is typical for students to move up or down in math as they come from all different schools including from around the world as the base is located nearby [REDACTED]

56. He is familiar with student as he has known her since birth; their respective families are friends (Testimony of [REDACTED] Student transferred to his math class second semester and was a great student who participated, worked well with others and did her homework. (Testimony of [REDACTED] She is a solid B student. (Testimony of [REDACTED] He did not see Student much outside of school during 2022-23 but she was her normal self in class (Testimony of [REDACTED]

57. While there are some students who are recommended to advance to an accelerated math program for sophomore year, student was not one of those. (Testimony of [REDACTED] She excelled in his class because she is in the correct placement; even with extra time on tests, she is not dominating the class. (Testimony of [REDACTED] When asked on cross examination if she could be in advanced geometry, he answered that she would work hard enough but have issues with the pace of the class (Testimony of [REDACTED] She would need tutoring which was speculatively set forth in answer to counsel's suggestion as 1 hour per day.(Testimony of [REDACTED] He does not recommend she take this class (Testimony of [REDACTED] He does not know what she would need to take graphic design in college.(Testimony of [REDACTED]

58. Student was evaluated medically on January 31, 2023. (PE G) Student was seen in follow up on that date.(PE G) Her history discloses several medication adjustments over time to assist with her anxiety and ADHD diagnoses. (PE G) The present concern section of the summary notes that she is having increased anxiety due to the transition to in-person schooling as well as high school. (PE G) The report notes that Student is a picky eater with some decreased appetite during the day but overall doing well. (PE G) The report also notes that she is getting 9 hours sleep per night although she is restless. (PE G)



## CONCLUSIONS OF LAW

The purpose of the IDEA is to ensure that all children with disabilities receive a free appropriate public education and related services “designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C. §1400(d)(1)(A). A district must comply with the IDEA’s procedural and substantive requirements in order to provide a free appropriate public education (FAPE) to a student. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176 (1982) To meet its substantive obligation, a district “must offer an IEP reasonably calculated to enable the student to make progress in light of the student’s circumstances.” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001; 69 IDELR 174 (2017)

In matters alleging a procedural violation, the hearing officer may find that a student did not receive a FAPE only if the procedural inadequacy impeded the student’s right to a FAPE, significantly impeded the parent’s opportunity to participate in the decisions-making process regarding the provision of a FAPE to the parent’s child or caused a deprivation of educational benefit. 20 U.S.C. §1415(f)(3)(E); 34 C.F.R. §300.513(a); *Rowley* at 206-207.

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.” *Andrew F.*, 137 S.Ct. 988 School districts are not required to “maximize” the potential of students with disabilities *Rowley*, 458 U.S. at 189, 199

## PROVISION OF THE DM SYSTEM

The parents complain that there was a failure to notify that Student was not provided the DM System within ten days after the service was to be initiated.

Under Illinois law, “[i]f, at a meeting to develop or revise a child's individualized education program, the individualized education program team determines that a certain service is required in order for the child to receive a free, appropriate public education and that service is not implemented within 10 school days after the service was to be initiated as set forth by the child's individualized education program, then the local education agency shall

provide the child's parent or guardian with written notification that the service has not yet been implemented." 105 ILCS 5/14-8.02f(d-5), See also, 34 CFR 300.503(b).

The record conclusively establishes that the 2022-2023 school year began on August 11, 2022. On Friday, August 19, 2022, the DM system was delivered and Student was fitted and trained on the system. The system was then available for use by the student in class on Monday, August 22, 2022. A calendar review documents that the system was provided within the 10 school days allowed by the school code and notice to the Student's parents of any delay was not required.

Parents' allegation that this delay occasioned academic regression is unfounded. The IHO focuses her decision on Student's academic regression in math as this is the only class for which Parents have made this claim.

During the week of August 15, 2022 to August 19, 2022, which was the first grading period indicated, Student earned 100% scoring in math. (DE 17, pg. 136) While the late provision is not optimal, it cannot be said to have caused an academic regression.

#### - **ALTERATION OF THE TERMS OF THE IEP**

Parents' list several procedural complaints that it characterizes as unilateral alteration of the terms of the Student's 2022-2023 IEP citing *M.C. v. Antelope Valley Union High School District*. 852 F.3d 840 (9<sup>th</sup> Cir. 2017) Parents urge the IHO to construe the IEP as a contract and urge that any deviations by the District as *per se* violations of the IDEA. The IHO declines this interpretation.

As such, the hearing officer may find that a student did not receive a FAPE only if the procedural inadequacy impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decisions-making process regarding the provision of a FAPE to the parent's child or caused a deprivation of educational benefit. 20 U.S.C. §1415(f)(3)(E); 34 C.F.R. §300.513(a); *Rowley* at 206-207.

#### **a. DM SYSTEM TRAINING**

Parents urge that the District teachers were not trained on the DM System. Student's transitional IEP dated March 28, 2022 provides that support for school personnel includes

“FM/Amplification training as needed”.( DE 3, pg. 34) The record establishes that the DM System, as described, is not a complicated device. The teachers each state that they have used the system previously. Further, the school audiologist’s testimony confirms that she reached out to the teachers quarterly and provided them an opportunity to discuss the Student’s DM usage and that she offered to provide training if needed. None of the teachers sought this training as they were all familiar with the use of the DM System. The record is devoid of the impact of training on the provision of FAPE in this instance. Parents fail to sustain their burden of proof regarding the allegation that the District failed to train their teachers on the DM System. Parents fail to prove that there was a procedural inadequacy which caused a deprivation of educational benefit.

#### **b. DM STORAGE**

Student’s March, 2022 IEP calls for additional time between passing periods for her to take care of the DM system as needed. (DE 3, pg. 34) Parents fail to prove that she was denied additional time or that the storage of the DM System in the school nurse’s office impacted the provision of FAPE.

The testimony and evidence establish that the device was best stored in a central location. The school nursing office was located 20’ from Student’s first period advanced algebra class. Student could simply walk in 6 feet and retrieve the system from the drawer of an unused desk without having to sign in.

Student’s record shows three documented instances where Student was late to class due to DM System maintenance, all during the day after her first period math class. There is no allegation that this caused any denial of FAPE in any other class. Parents’ focus is on Student’s math class. While she was marked tardy in math on a few occasions, there is no proof presented that this resulted in her missing instruction that impacted her education resulting in the denial of FAPE. Further, these tardy marks were reversed after consultation with her advanced algebra teacher.

Parents fail to prove that there was a procedural inadequacy which caused a deprivation of educational benefit.

### **c. CALCULATOR USE**

Student's March 2022 IEP provides for the use of a calculator. The evidence documents one instance where Student was denied the use of her calculator. That denial was not occasioned by any action on the part of the school as it was denied in the context of standardized testing.

The evidence shows that Student sat for the PSAT9 test which is administered by the College Board which dictates testing protocols. The test is not a part of the student record and is used only as a gauge of where the students are at academically and where they may need improvement.

Student was advised by email prior to testing that only a four function calculator was allowed for a portion of the test. Student failed to bring this type of calculator to the testing and was denied use of her scientific calculator.

It cannot be said that this had any impact on the provision of FAPE. This testing has no impact on student's education other than a measure of what assistance student might require. Parents have failed to sustain their burden of proof that the denial of calculator use on this test had any effect on Student's education.

### **d. GYM ACTIVITIES**

Student's transitional IEP from March, 2023 provides for "adaptations in PE as needed due to Graves Disease-ability to drink water as needed to address symptoms". (DE 3, pg. 50) The Parents participated in this IEP meeting.

In early September, on learning that Student was having trouble participating in certain activities, the District reacted with expediency. The IEP was amended with the Parent's consent to provide a broader accommodation to the Student and all failing participation marks were reversed. The IEP team can only develop a program based upon the best information available to them at the time the IEP is developed. *Gill v. Columbia 93 Sch. Dist.*, 1999 WL 33486650, (W.D. MO 1999)

Parents fail to prove that there was a procedural inadequacy which caused a deprivation of educational benefit.

**e. MATH INSTRUCTION**

Parents maintain that Student's Advanced Algebra instructor refused to wear the microphone portion of the DM system and complained about its use to Student in front the class. They state this caused Student increased anxiety and academic regression.

The preponderance of the evidence supports that Student's instructor wore the DM System except during a period of neck pain she suffered. At that time, she asked Student if she could place the microphone on her lectern. Student expressed her preference that it was worn by the teacher and the teacher complied. The teacher admits that she put the DM System on the podium during the daily session of individualized instruction and occasionally failed to turn the system back on as she was wrapping up at the very end of class.

Student does not state that she had difficulty with teacher use of the DM System in any other class. In fact, her Resource Study Skills teacher routinely placed the microphone on the podium while teaching and this did not present a problem. It only presented an issue only with respect to Student's advanced algebra teacher.

It is apparent from the record that Student disliked ■ and her teaching methods. When informed by ■ that Student felt that ■ threatening the issuance of pink slips was directed towards her, ■ was surprised and apologized. She tried to express concern that Student should be in the Introduction to Algebra section, but this was not acted on by the Parents at that time.

Parents fail to prove that there was a procedural inadequacy which caused a deprivation of educational benefit

**DID THE DISTRICT CAUSE STUDENT INCREASED ANXIETY,  
DIMINISHED MATH GRADES AND JEOPARDIZE  
STUDENT'S COLLEGE ADMISSION POTENTIAL**

Lastly, Parents maintain that the District's actions have caused Student to experience new or increased anxiety and suffer diminished math grades, a lowered grade point average and have jeopardized her admission to college.

The evidence does not support Parents allegations that Student lost weight, lost her appetite or was losing sleep. The medical visit summary presented by the Parents does note that Student is suffering increased anxiety but the history attributes this to adjustments attributable to the move to in-person learning and entry into high school. Parents fail to establish any medical nexus between the Student’s increased anxiety and anything alleged herein by Parents as an alleged deficiency.

It is apparent from the facts that this is a matter of the student being placed, at her parents’ discretion, in an advanced class that was not suited to her math background and further, that she did not like the math teacher or her methods. Student transferred to a math class more suited to her abilities and is now performing at a B level.

The record supports that any academic regression Student suffered in attaining a C-in Advanced Algebra was due to her test anxiety and failure to fully grasp the material. Parent admits as much in her email to the school guidance counselor. Further, when moved to the Intro to Algebra class, she raised her grade to a B.

The Parents fail to sustain their burden of proof. The District is required to provide an IEP “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” Endrew F., 580 .S. 386 (2017). That the District has done this has been amply demonstrated.

**ORDER**

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

1. . The Parents’ claims and relief are hereby denied.

Dated: September 29, 2023

\_\_\_\_\_ *Rhonda L. Walker*

Rhonda L. Walker  
Independent Hearing Officer

██  
██  
██  
██  
██

### **NOTICE OF RIGHT TO REQUEST CLARIFICATION**

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

**APPENDIX A**

Minor Student	██████████
Attending School	██████████ School District ██████████ High School District ██████████
Minor Student's Parents/Petitioners	██████████ ██████████
District Representative	██████████ -Dir. of Special Education
<b>PARENTS' WITNESSES:</b>	
Student	██████████ (Student)
Parent	██████████ (Parent ██████████)
Parent	██████████ (Parent ██████████)
<b>DISTRICT WITNESSES:</b>	
	██████████ - Physical Education Teacher
	██████████ - Special Education Teacher
	██████████ School Nurse
	██████████ - Guidance Counselor
<b>JOINT WITNESSES (listed on each of the parties witness lists)</b>	
	██████████ - Associate Director of Special Services
	██████████ -Current Algebra Teacher
	██████████ Director of Special Services
	██████████ -Advanced Algebra Teacher
	██████████ - Audiologist

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the Final Decision and Order was sent to ISBE and the parties, by their attorneys, by certified mail, return receipt requested directed to:

[REDACTED]  
[REDACTED]  
[REDACTED] |  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

Mr. Andy Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 N. First Street  
Springfield, IL 62777-0001  
Email: aeulass@isbe.net

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Rhonda L. Walker  
Impartial Hearing Officer  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]