

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

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Student, by and through his Parents<sup>1</sup>

v.

District<sup>2</sup>

Case No. 2025-0204

Leah Trinkala  
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.

**PROCEDURAL BACKGROUND.**

On March 31, 2025, the Petitioners (Parents) filed a due process complaint (Complaint) against the District on behalf of their fourteen year old son (Student) with a disability.<sup>3</sup> The Student is eligible for an IEP under the primary category of Other Health Impairment.<sup>4</sup> The Parents filed a due process complaint challenging the services provided to address the Student's executive functioning needs and the failure to implement the executive functioning goals and accommodations in the Student's IEPs.<sup>5</sup> The Parents were self-represented. The District is represented by Laura Sinars and Jessica Carbonaro of Robbins Schwartz, LLC

On March 31, 2025, the Illinois State Board of Education (ISBE) appointed the undersigned as the Impartial Hearing Officer (IHO).<sup>6</sup> On April 2, 2025, the Parents filed a Motion for Stay Put.<sup>7</sup> On April 3, 2025, the Parents filed an amended due process complaint.<sup>8</sup> On April 4, 2025, the Parents filed a Supplement to the Complaint and Amendment.<sup>9</sup>

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<sup>1</sup> Personally identifiable information is found in Appendix A. IHO Ex. 1.

<sup>2</sup> Personally identifiable information is found in Appendix A. IHO Ex. 1

<sup>3</sup> IHO Ex. 1.

<sup>4</sup> IHO Ex. 20.

<sup>5</sup> IHO Ex. 9.

<sup>6</sup> IHO Ex. 2.

<sup>7</sup> IHO Ex. 2.

<sup>8</sup> IHO Ex. 3.

<sup>9</sup>IHO Ex. 4. The IHO emailed the Parents on April 4, 2025 to discontinue the filing of amended complaints. IHO Ex. 4. The Parents filed another amended complaint on April 7, 2025 and the April complaint was stricken from the record. See IHO Ex. .

At the Status Conference held on April 10, 2025, the Impartial Hearing Officer ("IHO") set a briefing schedule to address the Parents' Motion for Stay Put, as well as the District's Partial Motion to Dismiss.<sup>10</sup> During the conference, the Parents were directed to file a Consolidated Due Process Complaint by April 11, 2025, encompassing all issues raised in the multiple complaints previously filed.<sup>11</sup> A Prehearing Conference was scheduled for May 12, 2025. Over the Parents' objection, the IHO granted the District's request to extend the 45-day timeline to allow sufficient time for briefing and resolution of the Motion for Stay Put and the Partial Motion to Dismiss.<sup>12</sup> On April 10, 2025, the Parents filed their Consolidated Due Process Complaint (Consolidated Complaint).<sup>13</sup> The District filed a Response to the Consolidated Complaint on April 15, 2025.<sup>14</sup>

On April 18, 2025, the District filed the District's Position Statement for Determination of Stay Put.<sup>15</sup> On April 21, 2025, the Parents filed their Response to the District's Position Statement for Determination of Stay Put.<sup>16</sup> On April 22, 2025, the District filed its Partial Motion to Dismiss Parents' Due Process Complaint Notice.<sup>17</sup> On April 27, 2025, the undersigned issued the Interim Order: Stay Put Determination which found the operative stay put IEP to be the January 22, 2025 IEP and the Student's placement in the general education setting for 80% more of the day.<sup>18</sup> On April 27, 2025, the Parents filed their Response in Opposition to the District's Partial Motion to Dismiss.<sup>19</sup> On May 4, 2025, the undersigned issued an Interim Order: Granting District's Partial Motion to Dismiss which dismissed the retaliation issue in the Consolidated Complaint.<sup>20</sup>

On May 4, 2025, the Notice of Prehearing Conference was emailed to the parties and on May 8, 2025 the proposed issues for the Prehearing Conference were emailed to the parties.<sup>21</sup> The Prehearing Conference occurred on May 12, 2025.<sup>22</sup> Hearing dates were set for July 29 and July 30, 2025.<sup>23</sup> A Prehearing Report and Order was issued on May 19, 2025.<sup>24</sup> A Revised Prehearing Report and Order was issued on June 7, 2025 to correct hearing dates and to add the Parents compensatory education plan.<sup>25</sup>

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<sup>10</sup> IHO Ex. 11.

<sup>11</sup> IHO Ex. 11.

<sup>12</sup> IHO Ex. 11.

<sup>13</sup> IHO Ex. 9.

<sup>14</sup> IHO Ex. 12.

<sup>15</sup> IHO Ex. 13.

<sup>16</sup> IHO Ex. 14.

<sup>17</sup> IHO Ex. 15.

<sup>18</sup> IHO Ex. 16.

<sup>19</sup> IHO Ex. 16.

<sup>20</sup> IHO Ex. 17.

<sup>21</sup> IHO Ex. 17 & 18.

<sup>22</sup> IHO Ex. 23.

<sup>23</sup> IHO Ex. 23.

<sup>24</sup> IHO Ex. 23.

<sup>25</sup> IHO Ex. 31.

On June 9, 2025, a Status Conference was held to address a new issue the Parents raised that the District's evaluation of the Student was inappropriate or incomplete.<sup>26</sup> This issue was not contained in the Consolidated Complaint and never raised at the Prehearing Conference.<sup>27</sup> The Parents were afforded an opportunity to amend their Consolidated Complaint, over the objection of the District, and the Parents declined the opportunity.<sup>28</sup> A Summary of Status Meeting/Order was issued indicating the hearing will only be based upon the certified issues in the Prehearing Report and Order.<sup>29</sup>

The hearing took place remotely via the Zoom platform on July 29 and July 30, 2025 and was an open hearing.<sup>30</sup> The Parents failed to participate in the hearing.<sup>31</sup>

At this hearing, the District called six witnesses.<sup>32</sup> Admitted into the record were District's Exhibits SD-1 - SD-11, SD-14, SD-16 - SD-24, SD-31 through SD-34 and SD 35 A - SD- 35 J, SD-35L - SD-35 LL, and SD-35 OO. On July 31, 2025, via email and mail, the District submitted its written closing statements and supporting case law.<sup>33</sup> The decision of the IHO is due within ten business days of the conclusion of the hearing.<sup>34</sup> As such, the IHO did not have the benefit of a transcript. This decision is based on the IHO's copious personal notes and recollection of the testimony provided at the hearing. In rendering this decision, the IHO considered all the documents admitted into evidence, the testimony of the witnesses, the District's closing argument and suggested case law, as well as the IHO's own independent research. This decision was issued within ten business days as required by Illinois law.<sup>35</sup>

### **ISSUE AND REQUESTED REMEDIES.**

The issues to be determined are as follows:

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<sup>26</sup> IHO Ex. 31.

<sup>27</sup> IHO Ex. 31.

<sup>28</sup> IHO Ex. 31.

<sup>29</sup> IHO Ex. 31.

<sup>30</sup> No third party observers were present for the hearing.

<sup>31</sup> The Mother appeared at the beginning of the hearing and made an opening statement raising her objections. The Mother left the hearing and never returned despite receiving emails from the IHO to return to the hearing. See IHO Ex. 44. The Mother explained there was no legal requirement for her to present her case at a hearing and she could present her case by her exhibits and closing statement. The Mother's closing statement was not accepted since Mother refused to participate in the proceedings. The Mother's exhibits were not considered since they were not presented at the hearing. .

<sup>32</sup> Personally identifiable information is found in Appendix A. IHO Ex. 1. The Mother objected to the School Psychologist alleging the School Psychologist had not evaluated the Student. The Parent did not raise a timely objection to this witness testifying; an objection was only raised to the District calling the Mother as a witness. The IHO struck the Grandmother and the Student's brother from the witness list because their testimony would be duplicative of the Parents and the Student's testimony. The Parents never presented their case at the hearing.

<sup>33</sup> The Mother objected to the District's closing statement because the closing statement was emailed at 5:17 p.m. and not by 5 p.m. on July 31, 2025. See IHO Ex. 45. The Mother is not prejudiced by the closing statement being 17 minutes late. Additionally, the purpose of the written outline of the closing statement is to assist the IHO in writing the final determination and order.

<sup>34</sup> 105 ILCS 5/14-8.02a(g55)(5).

<sup>35</sup> 105 ILCS 5/14-8.02a(g55)(5).

- a. Whether the District failed to materially implement the Student's 2/20/2024, 3/18/2024 (amended IEP), and the 1/22/2025 IEP because the executive functioning goal, the scaffolding and breaking down of large assignments, and the usage of a digital assignment notebook were not implemented?<sup>36</sup>

Defense: The school team has implemented the 3/2024 IEP for 8<sup>th</sup> grade. The executive functioning goal was implemented by school staff and the teachers responsible for breaking down the Student's assignments did so when applicable. The accommodation of a digital assignment notebook was implemented as well. The executive functioning goal and the scaffolding of assignments and the digital assignment notebook are being implemented during the 2024-2025 school year. The District has at all times provided the Student with a FAPE.<sup>37</sup>

- b. Whether the District failed to include all the required IEP team members at the 1/22/2025 IEP meeting when the case manager failed to attend the meeting in violation of 34 CFR § 300.321 and thus denied the Student a FAPE?<sup>38</sup>

Defense: All of the appropriate members of the IEP team were present at the meeting including the Student's special education teacher. The Student has two special education teachers and the special teacher in attendance is in several or not all of his special education classes which satisfies the IDEA and the School Code.<sup>39</sup>

- c. Whether the District's 1/22/25 IEP was not reasonably calculated to enable the Student to make progress in light of the Student's unique circumstances and to receive an educational benefit and thus denied the Student a FAPE specifically as follows because:

- (i) The District removed the 15 minutes per week of specialized instruction for teaching and monitoring the Student's executive functioning skills to assist the Student in meeting his executive functioning goal;
- (ii) The District removed the functional safety plan finalized on 9/17/2024 for the Student; and
- (iii) The District removed the Student's scheduled breaks and replaced the breaks with requested breaks.<sup>40</sup>

Defense: The safety plan was not part of the IEP. The safety plan was only mentioned at the IEP meeting in one sentence. The safety plan was only designed to address an issue the Student had with another peer and the safety plan was supervised by the Principal. The accommodations in the IEP were discussed and the scheduled breaks were modified to requested breaks for the Student to develop his independence and

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<sup>36</sup> IHO Ex. 31.

<sup>37</sup> IHO Ex. 31.

<sup>38</sup> IHO Ex. 31.

<sup>39</sup> IHO Ex. 31.

<sup>40</sup> IHO Ex. 31.

for his transition into high school. The 15 minutes per week was changed from direct services to pull out minutes.<sup>41</sup>

- d. Whether the District was required under 34 CFR § 300.503 to provide Prior Written Notice when the safety plan and the scheduled breaks were removed from the 1/22/2025 IEP and thus denied the Student a FAPE?<sup>42</sup>

Defense: The safety plan was never a part of the Student's IEP and was not required to be in the 1/22/2025 IEP. Prior written notice was not required since the plan was not part of the IEP. There was a discussion of the change in the scheduled breaks and the rationale for the change and the Parents were part of this discussion. The IEP meet the requirements for prior written notice under Illinois law and the documentation was received by the Parents after the meeting.<sup>43</sup>

The Parents' remedies are as follows:

- a. Amend the January 22, 2025 IEP as follows:
- (i) Fully incorporate supports for executive functioning;
  - (ii) Restore and structure digital assignment notebook use (breaking down larger assignments, tracking due dates, supporting missing work and test prep).
  - (iii) Provide documented and teacher-supported movement/mental health breaks;
  - (iv) Reinforce electronic assignment completion accommodations;
  - (v) Include a documented transition plan that integrates the safety plan;
  - (vi) Add executive functioning coaching as a related service.<sup>44</sup>
- b. Conduct an independent executive functioning assessment at public expense.<sup>45</sup>
- c. Provide as compensatory services 30 hours of executive functioning coaching, 40 hours of academic tutoring across core subjects and 40 hours of therapeutic support.<sup>46</sup>
- d. Reimburse Parents for time and expense incurred mitigating harm (tutoring, advocacy, acting in the role of the executive functioning coach).<sup>47</sup>

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<sup>41</sup> IHO Ex. 31.

<sup>42</sup> IHO Ex. 31.

<sup>43</sup> IHO Ex. 31.

<sup>44</sup> IHO Ex. 31.

<sup>45</sup> IHO Ex. 31.

<sup>46</sup> IHO Ex. 31.

<sup>47</sup> IHO Ex. 31.

- e. Acknowledge and remedy procedural violations including failure to provide PWN.<sup>48</sup>
- f. Order staff training on executive functioning, DMDD, Autism, IEP implementation and compliance.<sup>49</sup>

The District's remedies are as follows:

- a. Find the January 22, 2025 IEP provided the Student with a FAPE in the design and the implementation of the IEP and deny all the relief being sought by the Parents.<sup>50</sup>

### **FINDINGS OF FACT.**

After considering and reviewing all the evidence presented at the hearing, the IHO's Findings of Fact are as follows:

#### **A. BACKGROUND.**

1. The Student has been receiving special education services since fifth grade under the categories of Other Health Impairment and Autism.<sup>51</sup> The Student previously had a 504 Accommodation Plan.<sup>52</sup>
2. The Student has diagnoses of severe allergies, encopresis, attention deficit hyperactivity disorder (ADHD), Autism and Disruptive Mood Disorder.<sup>53</sup> The Student's academic abilities are his strength and the Student's standardized assessments have consistently been within the average to above average range.<sup>54</sup> The Student's encopresis requires the Student to have assistance to independently manage his bodily functions.<sup>55</sup>
3. The Student requires accommodations to address his deficits in executive functioning which include the Student's ability to organize materials and regulate attention.<sup>56</sup> Executive functioning was defined as a set of processes in the frontal lobe to regulate and manage every day demands with behavior, cognitive functioning and emotional regulation.<sup>57</sup> The Student also requires accommodations to address his deficits with his

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<sup>48</sup> IHO Ex. 31.

<sup>49</sup> IHO Ex. 31.

<sup>50</sup> IHO Ex. 31.

<sup>51</sup> SD-6 p. 109.

<sup>52</sup> SD-6 p. 109.

<sup>53</sup> SD-3, p. 53. SD 6, p. 104. SD-1, p 007.

<sup>54</sup> SD-6, p. 099, 105 and 109..

<sup>55</sup> SD-6 p. 109.

<sup>56</sup> See SD-6, p. 109.

<sup>57</sup> Testimony of School Psychologist.

social language skills, verbal and nonverbal communication, social communication and pragmatic language skills.<sup>58</sup>

**B. SEVENTH GRADE – 2023-2024 SCHOOL YEAR.**

4. The Student attended H Junior High for 7<sup>th</sup> grade for the 2023-2024 school year.<sup>59</sup>
5. During 7<sup>th</sup> grade, an IEP meeting was held on December 21, 2023. Present at the meeting were the Parents, the Student, the Social Worker, a speech language pathologist, a special ed and gen ed teacher, a district representative, and an occupational therapist.<sup>60</sup> This IEP was in effect from January 17, 2024 to May 24, 2024.<sup>61</sup>
6. The IEP team agreed the Student's placement would be in gen ed for 80% or more of the school day.<sup>62</sup> The Student was assigned to co-taught Language Arts, Math, English, Social Studies and Science classes.<sup>63</sup> In the co-taught classes, the Student was to receive special education services for 5 minutes for 5 sessions per week for co-taught Math; 10 minutes for 5 sessions per week for co-taught Language Arts; 5 minutes for 2.5 sessions for co-taught Science and Social Studies; and 10 minutes for 2.5 sessions for week for co-taught English.<sup>64</sup> The Student was to receive 20 minutes of occupational therapy consult minutes and 120 minutes of social work and speech/language services per month.<sup>65</sup>
7. The Student had one goal in this IEP to improve his social language skills by problem solving social situations, understanding nonverbal communications and identifying emotions.<sup>66</sup>
8. The Student was entitled to receive the following accommodations in all of his classes to address the Student's executive functioning deficits:
  - a. Breaking down of larger assignments into sections or chunks and allowing lengthier assignments to be typed.<sup>67</sup>
  - b. Access to an electronic checklist and organizers for lengthier written assignments.<sup>68</sup>

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<sup>58</sup> SD-3, p. 056.

<sup>59</sup> Testimony of Special Ed Coordinator.

<sup>60</sup> SD-1 p. 002.

<sup>61</sup> SD-1, p. 001 and 027.

<sup>62</sup> SD-1, p. 027 and 030.

<sup>63</sup> SD-1, p. 010, and 027.

<sup>64</sup> SD-1, p. 027.

<sup>65</sup> SD-1, p. 027.

<sup>66</sup> SD-1, p.013.

<sup>67</sup> SD-1, p. 019- -024.

<sup>68</sup> SD-1, p. 019- -024.

- c. Ability for the Staff or Student to highlight directions, key words or important information.<sup>69</sup>
- d. Access to an electronic assignment notebook and checklists to help keep the Student's assignments organized.<sup>70</sup>
- e. Receive positive reinforcement to stay on task and cues to slow down and take time with assignments.<sup>71</sup>
- f. Receive extended time to complete assignments and assessments.<sup>72</sup>
- g. Ability to use a highlighter when annotating passages.<sup>73</sup>
- h. Provide small group testing in the classroom or an alternate location and be seated near the door for easy access in and out of the classroom to use the bathroom or take a break.<sup>74</sup>

Scaffolding was not an accommodation in the Student's IEP.<sup>75</sup>

- 9. Accommodations were included to address the Student's health needs. The December IEP allowed the Student to have bathroom breaks as often as needed.<sup>76</sup> The Student may also be given breaks during class time as decided by a special ed teacher.<sup>77</sup>
- 10. Another IEP meeting was held on February 20, 2024. The Student's eligibility, related services and placement remained the same for the remainder of 7<sup>th</sup> grade from March 18, 2024 to May 24, 2024 and then for 8<sup>th</sup> grade from 8/19/2024 to 1/16/2025.<sup>78</sup> The accommodations were revised to include that the Student may be assigned a bathroom schedule, and teacher prompts may be provided when bathroom use is necessary.<sup>79</sup> The Student will be permitted to use the bathroom as often as needed and will not be penalized academically for taking breaks or using the restroom.<sup>80</sup>
- 11. After this IEP meeting, the parties participated in mediation on March 11, 2024. A Mediation Agreement (Agreement) was reached between the District and the Parents.<sup>81</sup> The Agreement amended the Student's December 21, 2023 to include an executive functioning goal which measures the Student's executive functioning skills as measured by accurate completion of the Student's assignment notebook and completion and submission of the Student's assignments.<sup>82</sup> The Agreement also added an additional 15

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<sup>69</sup> SD-1, p. 019- -024.

<sup>70</sup> SD-1, p. 019- -024.

<sup>71</sup> SD-1, p. 019- -024.

<sup>72</sup> SD-1, p. 019- -024..

<sup>73</sup> SD-1, p. 019- -024.

<sup>74</sup> SD-1, p. 019- -024.

<sup>75</sup> Testimony of Special Ed Coordinator.

<sup>76</sup> SD-1, p 019-024.

<sup>77</sup> SD-1, p 019-024.

<sup>78</sup> SD-3, p. 078.

<sup>79</sup> SD-3, p. 071.

<sup>80</sup> SD-3, p. 071.

<sup>81</sup> Testimony of Special Ed Coordinator. SD 2 p. 042.

<sup>82</sup> SD-2 p. 042. Testimony of Special Ed Coordinator.

minutes per week of specialized instruction for teaching and monitoring the skills measured in this executive functioning goal.<sup>83</sup>

12. On March 18, 2024, the Student's February 20, 2024 IEP was amended per the Mediation Agreement to include the executive functioning goal and the Student's co-taught science and social studies minutes were increased to provide time for the teaching and monitoring of these skills.<sup>84</sup> The increase in the service minutes was to be implemented from August 19, 2024 to January 16, 2025.<sup>85</sup>

### **C. EIGHTH GRADE – 2024-2025 SCHOOL YEAR**

13. The Student attended H Junior High for 8<sup>th</sup> grade for the 2024-2025 school year.<sup>86</sup>
14. A Student Safety Plan was developed for the Student which was not incorporated into the Student's IEP.<sup>87</sup> At the beginning of the school year, the Assistant Principal and the Mother developed a School Safety Plan for the Student due to physical violence by another child toward the Student.<sup>88</sup> The Safety Plan was effective from September 17, 2024 through May 30, 2025.<sup>89</sup> The Safety Plan was discussed with the staff members and was not required to be part of the Student's IEP in order to be followed.<sup>90</sup>
15. The Student was due to receive a triannual evaluation this school year. The IEP team met virtually with the Parents on October 30, 2024 to discuss the domain areas for the Student's three year evaluation and the IEP team including the Parents agreed with the domain areas to address the needs of the Student and the Parents consented to the reevaluation.<sup>91</sup> The domain areas were academic achievement, cognitive functioning, functional performance, communication status, health, motor abilities and social/emotional status.<sup>92</sup> The Mother had concerns with the Student's executive functioning skills and ability to keep track of assignments.<sup>93</sup>

#### **C1. ELIGIBILITY MEETING.**

16. An eligibility meeting was held on January 14, 2025 to discuss the Student's triennial reevaluation results.<sup>94</sup> A draft of the evaluation results were emailed to the Parents on January 8, 2025.<sup>95</sup> Present at the meeting were the Parents, the School Psychologist, Special Ed Teacher 2, the Social Worker, an occupational therapist, a gen ed teacher, and

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<sup>83</sup> SD-2 p. 042. Testimony of Special Ed Coordinator.

<sup>84</sup> SD-3, p. 047

<sup>85</sup> Testimony of Special Ed Coordinator.

<sup>86</sup> Testimony of Special Ed Coordinator.

<sup>87</sup> Testimony of Special Ed Coordinator and Special Ed Teacher 2..

<sup>88</sup> Testimony of Special Ed Coordinator. See SD 21 , p. 215.

<sup>89</sup> SD-21, p.215.

<sup>90</sup> Testimony of Special Ed Coordinator.

<sup>91</sup> SD-4, p. 087 – 092. Testimony of School Psychologist.

<sup>92</sup> SD-4, p. 089 – 090.

<sup>93</sup> SD-4, p. 091. Testimony of School Psychologist.

<sup>94</sup> Testimony of Special Ed Coordinator.

<sup>95</sup> Testimony of Special Ed Coordinator. SD 35

the Case Manager.<sup>96</sup> The Student was invited to the meeting.<sup>97</sup> The IEP team wanted to discuss the Student's transition to high school.<sup>98</sup>

17. A review of the student records showed no concerns with the Student's academic and cognitive functioning.<sup>99</sup> The Student is scoring average to above average on the standardized testing and the Student is getting As and Bs in the general education setting.<sup>100</sup> The Student's overall IQ is 107 which is average.<sup>101</sup> The Student was responding to verbal direction when he was off task in the classroom.<sup>102</sup>
18. The Student no longer met the eligibility criteria for Autism.<sup>103</sup> Autism Spectrum Rating Scales were completed by the Mother and the Special Ed Teacher 2.<sup>104</sup> The Special Ed Teacher 2's scores for DSM-5 Scale, Stereotypy, Behavioral Rigidity, Social Communication and Attention were average.<sup>105</sup> In the opinion of the School Psychologist and based on the assessment results, the mother is observing more traits consistent with Autism in the home setting than were observed by the Special Education Teacher 2 in the structured school environment, where the scores were within the average range.<sup>106</sup>
19. The Student no longer required speech/language services to address his pragmatic language skills. The Student scored 99 on Social Language Development which is average and scored below average on problem solving.<sup>107</sup> The Student was average on making inferences, interpreting social language and in social interaction.<sup>108</sup> A special ed teacher and gen ed teacher completed the Pragmatic Language Skills Inventory.<sup>109</sup> Their scores were average on Pragmatic Language, Classroom Interaction and Personal Interaction.<sup>110</sup> The scores were average (low end) on Personal Interaction.<sup>111</sup>
20. The Student continued to meet the eligibility criteria for the classification of Other Health Impairment due to ongoing behavioral and social-emotional needs, specifically in the areas of peer socialization, behavioral regulation, and self-monitoring.<sup>112</sup> These

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<sup>96</sup> SD-6, p. 095.

<sup>97</sup> Testimony of Special Ed Coordinator.

<sup>98</sup> Testimony of Special Ed Coordinator.

<sup>99</sup> Testimony of School Psychologist.

<sup>100</sup> SD-6, p. 099. Testimony of School Psychologist.

<sup>101</sup> Testimony of School Psychologist. SD 6, p. 116.

<sup>102</sup> Testimony of School Psychologist.

<sup>103</sup> Testimony of School Psychologist.

<sup>104</sup> Testimony of School Psychologist. SD 6, p. 110.

<sup>105</sup> Testimony of School Psychologist. SD 6, p. 110 -111.

<sup>106</sup> Testimony of School Psychologist.

<sup>107</sup> SD-6, 117.

<sup>108</sup> SD-6, p. 118 and 119.

<sup>109</sup> SD-6, p. 118 and 119.

<sup>110</sup> SD-6, p. 121.

<sup>111</sup> SD-6, p. 121

<sup>112</sup> Testimony of School Psychologist.

needs require therapeutic interventions, classroom accommodations, and targeted support to promote appropriate self-monitoring and behavioral regulation.<sup>113</sup>

## **C2. JANUARY 22, 2025 IEP MEETING.**

21. The IEP was not finalized due to the Student being injured and the meeting was continued to January 22, 2025.<sup>114</sup> The Notification of Conference was issued on January 15, 2025, via email, and the drafted IEP paperwork and the finalized eligibility paperwork was emailed to the Parents.<sup>115</sup> The Student, a gen ed teacher, the Case Manager, Special Ed Teacher 2, two representatives from L High School, the Social Worker were invited to the IEP meeting.<sup>116</sup>
22. The required member of the IEP were present at the January 22, 2025 IEP meeting which included the Parents, a gen ed teacher, the Social Worker, the Special Ed Teacher 2 and the Special Ed Coordinator.<sup>117</sup> The Special Ed Coordinator oversees the day to day special services' needs, IEP evaluations and staff evaluations.<sup>118</sup> One representative from L High School was also in attendance.<sup>119</sup> The Case Manager was unable to attend the meeting because her child was sick and the Parents agreed to proceed with the meeting without the Case Manager.<sup>120</sup> The Special Ed Teacher 2, in attendance, co-teaches the Student's Science, English class and Language Arts, is an advisory partner for the Student's social/emotion lessons once a week, and had conferred with the Case Manager prior to the meeting.<sup>121</sup>
23. The Parents never completed a written excusal form to excuse the Case Manager from this IEP meeting. On January 23, 2025 at 11:13 a.m., the written excusal form was emailed to the Parents to complete.<sup>122</sup> A reminder to complete the excusal form was emailed to the Parents at 2:38 p.m. on January 23, 2025.<sup>123</sup> The Parents refused to sign the paperwork.<sup>124</sup>
24. The Student's specialized instruction to address the Student's executive functioning was modified following a review of the reevaluation results. The Student no longer required the academic support in co-taught classes.<sup>125</sup> Instead the Student would now receive 30 minutes of specialized instruction in a resource room for the remainder of the current academic year, increasing to 95 minutes per week in 9<sup>th</sup> grade.<sup>126</sup> This change allows for

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<sup>113</sup> SD-6, p. 107.

<sup>114</sup> Testimony of Special Ed Coordinator.

<sup>115</sup> SD-7, p. 135. SD-35C, p. 423. Testimony of Special Ed Coordinator.

<sup>116</sup> SD-7 p, 135. Testimony of Special Ed Coordinator.

<sup>117</sup> SD-8, p. 140.

<sup>118</sup> Testimony of Special Ed Coordinator.

<sup>119</sup> SD-8, p. 140, 142 and 167.

<sup>120</sup> Testimony of Special Ed Coordinator and Case Manager. SD-8. p. 167.

<sup>121</sup> Testimony of Special Ed Teacher 2.

<sup>122</sup> Testimony of Special Ed Coordinator. SD-35 DD p. 488-489.

<sup>123</sup> Testimony of Special Ed Coordinator. SD-35 EE, p.. 491.

<sup>124</sup> Testimony of Special Ed Coordinator.

<sup>125</sup> Testimony of Case Manager.

<sup>126</sup> SD-8, p. 161-162.

more targeted instruction and individualized support focused on executive functioning skills including one-on-one check-ins and direct skill development with the special ed teacher.<sup>127</sup> The decision to amend the service delivery model was based on classroom observations, teacher input, and reevaluation data.<sup>128</sup> Observations showed that the Student was engaged, focused, and on task in the general education environment without requiring adult prompting or assistance.<sup>129</sup> The Student demonstrated improvement in time management, behavioral regulation, and the ability to meet classroom expectations.<sup>130</sup> The IEP team determined that providing executive functioning instruction in a separate, structured setting would better support the Student's continued growth in independence and allow for the application of learned strategies in a focused manner.<sup>131</sup> The Parents disagreed with the change in the delivery of the supports.<sup>132</sup>

25. The Student's placement remained as 80% of the time or more in the gen ed setting for the remainder of the school year and for the 9<sup>th</sup> grade from August 13, 2025 to January 21, 2026.<sup>133</sup> The Student would receive 80 minutes of social work per month.<sup>134</sup> The speech/language services were no longer required based upon the evaluation results and the Student's social communication and interaction could be address through the social work minutes.<sup>135</sup> The Student no longer required any occupational therapy minutes based upon the results of reevaluation.<sup>136</sup>
26. This IEP contained three goals to address the Student's executive functioning, social skills and transition needs. Goal 1 was an executive functioning goal to increase the Student's executive functioning skills in the area of task management by monitoring and maintaining assignment completion.<sup>137</sup> Goal 2 was a functional goal for the Student to improve his problem solving and perspective taking skills to enhance social skills, interactions, and academic success.<sup>138</sup> Goal 3 was a transition goal for the Student to explore his career interest of computer technology and develop essential skills for the workplace.<sup>139</sup>
27. The January 22, 2025 IEP included supplemental aids and services designed to support the Student's executive functioning, health, and social/emotional needs. These supports included: preferential seating; repeated directions as needed; cues to review work for accuracy and completion; bathroom breaks upon the Student's request for self-regulation; periodic checks on the Student's organizational skills, such as monthly spot

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<sup>127</sup> Testimony of Case Manager.

<sup>128</sup> Testimony of Case Manager, Special Ed Coordinator and Special Ed Teacher.

<sup>129</sup> Testimony of School Psychologist.

<sup>130</sup> Testimony of School Psychologist, Special Ed Coordinator and Special Ed Teacher 2.

<sup>131</sup> Testimony of Special Ed Teacher 2.

<sup>132</sup> Testimony of Special Ed Teacher 2.

<sup>133</sup> SD-8 p. 161 and 162.

<sup>134</sup> SD-8 p. 161 and 162.

<sup>135</sup> SD-6, p.105. Testimony of Special Ed Coordinator.

<sup>136</sup> Testimony of Special Ed Coordinator.

<sup>137</sup> SD-8, p. 152.

<sup>138</sup> SD-8, p. 153.

<sup>139</sup> SD-8, p. 154.

check-ins; support for social interaction in both whole-group and small-group settings; use of speech-to-text and/or typing for written tasks; graphic organizers for extended writing assignments; access to fidgets and flexible seating; access to an electronic assignment log; and rubrics and checklists for formal written assignments and long-term projects.<sup>140</sup> Scaffolding was not an accommodation in this IEP.<sup>141</sup>

28. The breaks for the Student were changed to Student requested breaks for regulation and bathroom breaks upon request.<sup>142</sup> The IEP team wanted the Student to become more independent.<sup>143</sup> The breaks for the Student would be monitored through the electronic pass system.<sup>144</sup> The Mother wanted the Student to have scheduled breaks which were subtle so attention is not drawn to the Student when the Student is requesting a break.<sup>145</sup> The Special Ed Teacher informed the Parents scheduled breaks were never part of the Student's prior IEPs.<sup>146</sup> The Student was already advocating for himself by raising his hand every day for bathroom breaks and did not need prompts to request breaks during class.<sup>147</sup> Based upon the electronic pass system, the Student was requesting one or two breaks a day.<sup>148</sup>
29. The Parents received prior written notice of the change with the Student's breaks. On January 23, 2025, the Parents received the Notification of Conference Recommendations.<sup>149</sup> The Notification informed the Parents to refer to the copy of the IEP conference summary report which contains the information used in making these recommendations.<sup>150</sup> The Notification informed the Parents to contact the Director of Special Services regarding their rights and informed the Parents their parental rights is in the Explanation of Procedural Safeguards.<sup>151</sup> The Parents received their procedural safeguards, via email, on August 29, 2024.<sup>152</sup> On January 23, 2025, the IEP was emailed to the Parents without the sign-in-sheet.<sup>153</sup> The conference notes from the IEP meeting were emailed to the Parents on January 30, 2025.<sup>154</sup> This IEP documents the rationale for the change in bathroom break procedures, outlines the reasons the IEP team denied the Parents' request for scheduled breaks, and specifies the information considered in making this decision.<sup>155</sup>

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<sup>140</sup> SD-8 p. 159 and 163.

<sup>141</sup> Testimony of Special Ed Coordinator.

<sup>142</sup> Testimony of Special Ed Coordinator.

<sup>143</sup> Testimony of Special Ed Teacher 2.

<sup>144</sup> Testimony of Special Ed Coordinator.

<sup>145</sup> SD-8, p. 168.

<sup>146</sup> Testimony of Special Ed Coordinator.

<sup>147</sup> Testimony of Special Ed Teacher 1 and Case Manager..

<sup>148</sup> Testimony of Special Ed Coordinator. SD-34, p.376.

<sup>149</sup> SD-8 p. 171.

<sup>150</sup> SD-8 p. 171

<sup>151</sup> SD-8 p. 171

<sup>152</sup> SD-8 p. 167.

<sup>153</sup> SD-35, p.491. Testimony of Special Ed Coordinator.

<sup>154</sup> SD-35, p. 524. Testimony of Special Ed Coordinator.

<sup>155</sup> SD-8, p. 149 & 168.

30. On March 11, 2025, the Assistant Principal and the Mother revised the School Safety Plan to allow the Student to leave class two minutes early to arrive at his next class.<sup>156</sup> The purpose of the plan is to allow the Student to arrive to his next period by eliminating his hallway interactions with peers.<sup>157</sup> This amendment was not part of the Student's IEP and was not required to be in the IEP to be implemented by the school staff.<sup>158</sup>

### **C.3 IMPLEMENTATION.**

31. The executive functioning accommodations were implemented during the Student's 8th-grade year with fidelity.<sup>159</sup> The Case Manager reviewed the Student's IEP and accommodations with the Special Education Teacher 1, who co-taught Math.<sup>160</sup> To support consistent implementation, Special Education Teacher 1 created a quick-reference guide summarizing the accommodations and shared it with her Math co-teacher.<sup>161</sup> Special Education Teacher 2 also reviewed all accommodations and collaborated with instructional staff to ensure effective application across content areas.<sup>162</sup>

Each class included a posted daily agenda outlining the day's activities, and homework assignments with corresponding due dates were visibly posted for the Student.<sup>163</sup>

Teachers provided reference sheets and test reminders as part of their instructional practice.<sup>164</sup> In Social Studies, the Case Manager provided assignment breakdowns for the Student, as well as for the broader class, and ensured these modified assignments were uploaded to the Student's electronic assignment notebook.<sup>165</sup> A graphic organizer was also utilized to support the breakdown of tasks.<sup>166</sup> While the Student had limited long-term projects, teachers consistently broke down larger assignments into manageable steps.<sup>167</sup> For a long-term book report project, Special Education Teacher 2 created a project calendar for all students, which included key dates and milestones.<sup>168</sup> The Student had digital access to this calendar, which included pacing guidance, such as suggested daily reading targets and a countdown of remaining days.<sup>169</sup>

32. The Student's electronic assignment notebook was successfully implemented.<sup>170</sup> The notebook included links to daily and weekly assignments and clearly identified any late

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<sup>156</sup> SD-22, p. 217.

<sup>157</sup> SD-22, p. 217.

<sup>158</sup> Testimony of Special Ed Coordinator.

<sup>159</sup> Testimony of Special Ed Teacher 1 and Special Ed Teacher 2.

<sup>160</sup> Testimony of Case Manager.

<sup>161</sup> Testimony of Special Ed Teacher 1.

<sup>162</sup> Testimony of Special Ed Teacher 2.

<sup>163</sup> Testimony of Special Ed Teacher 1 & 2.

<sup>164</sup> Testimony of Special Ed Teacher 1.

<sup>165</sup> Testimony of Case Manager.

<sup>166</sup> Testimony of Case Manager.

<sup>167</sup> Testimony of Case Manager and Special Ed Teacher 1 & 2.

<sup>168</sup> Testimony of Special Ed Teacher 2.

<sup>169</sup> Testimony of Special Ed Teacher 2.

<sup>170</sup> See, SD-31, p. 298-337.

or incomplete assignments.<sup>171</sup> The Student had no difficulties navigating the links.<sup>172</sup> The Special Ed Teacher 1 supported the Student with a collage project and the Student was provided with a checklist for everything that had to be completed and broke down the assignment for the Student.<sup>173</sup> The Case Manager checked in with the Student daily to review progress and ensure completed tasks were marked off in the notebook.<sup>174</sup> The special education and general ed teachers also supported the Student with the notebook consistently and with fidelity.<sup>175</sup>

33. The Student's executive functioning goal was implemented for the remainder of the school year.<sup>176</sup> The Student's teachers maintained a log of their resource minutes from March 31, 2025 through May 26, 2025 which kept a record of the time they worked with the Student on his executive functioning skills and goals.<sup>177</sup> For the week of March 31, 2025, the Student received 43 minutes; for the week of April 14, 2025, 75 minutes; for the week of April 21, 2025, 35 minutes; for the week of April 28, 2025, 53 minutes; for the week of May 5, 2025, 50 minutes; for the week of May 12, 2025, 32 minutes; for the week of May 19, 2025 40 minutes; and 5 minutes on May 27, 2025.<sup>178</sup>
34. The social work goal was implemented by the Social Worker and progress was made.<sup>179</sup> The Student met the first benchmark of this goal by being able to engage in problem-solving activities and completing them with 75% accuracy.<sup>180</sup> The Student made progress with identifying solutions to a problem and explaining his reasoning.<sup>181</sup> The Student made progress with understanding the thoughts and feelings of others and had met the 8<sup>th</sup> grade standards for a typical 8<sup>th</sup> grader in the skill development of his social/emotional skills.<sup>182</sup>
35. The Student's transition goal was implemented and the Student made progress.<sup>183</sup> The Student completed the Student Transition Input Questionnaire which identified the Student's interest in attending college and pursuing a degree in computer technology.<sup>184</sup> The Student attended a L High School freshman registration with his Mother and signed up for an elective – AP Computer Science.<sup>185</sup> Special Ed Teacher 2 also met with the

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<sup>171</sup> Testimony of Special Ed Teacher 1.

<sup>172</sup> Testimony of Case Manager.

<sup>173</sup> Testimony of Special Ed Teacher 1.

<sup>174</sup> Testimony of Case Manager.

<sup>175</sup> Testimony of Case Manager.

<sup>176</sup> Testimony of Case Manager.

<sup>177</sup> Testimony of Special Ed Coordinator. See SD-18 p. 207-212.

<sup>178</sup> SD-18, p. 207-212.

<sup>179</sup> Testimony of Social Worker. See, SD-17, p 202 – p. 205.

<sup>180</sup> Testimony of Social Worker. See SD-16, p. 199.

<sup>181</sup> SD16, p. 199.

<sup>182</sup> Testimony of Social Worker.

<sup>183</sup> Testimony of Special Ed Teacher 2.

<sup>184</sup> SD-8, p.154.

<sup>185</sup> Testimony of Special Ed Teacher 2 and SD-16, p. 200.

Student to discuss electives to support his career goal and was encouraged to join the Technology club at the high school.<sup>186</sup>

36. The Student successfully completed the 8th grade and is scheduled to attend 9th grade at L High School for the 2025–2026 academic year.<sup>187</sup> The Student earned A and B grades in all subjects, with the exception of a C+ in Language Arts during the third quarter and a C– in STEAM during the fourth quarter.<sup>188</sup> The Student demonstrated mastery of the 8th-grade core curriculum.<sup>189</sup> Additionally, the Student showed growth in independence with completing assignments, performed well in the classroom, and consistently demonstrated an understanding of academic concepts.<sup>190</sup> The Student had strong attendance, missing only four days during the school year.<sup>191</sup>

### **CONCLUSIONS OF LAW AND DISCUSSION OF THE ISSUES**

Based on the above Findings of Fact, the District’s closing statement, and this IHO’s legal research, the Conclusions of Law are as follows:

- A. Whether the District failed to materially implement the Student’s 2/20/2024, 3/18/2024 (amended IEP), and the 1/22/2025 IEP because the executive functioning goal, the scaffolding and breaking down of large assignments, and the usage of a digital assignment notebook were not implemented?**<sup>192</sup>

The Seventh Circuit has not addressed an implementation challenge; however, there is a consensus for the courts to follow the Fifth Circuit Standard which requires a party to prevail on implementation challenge, the party must show” more than a de minimis failure to implement all elements of that IEP, and instead must demonstrate that the school district failed to implement substantial or significant portions of the IEP.<sup>193</sup> The 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 11 Circuit are in agreement that in an implementation case, the question is not whether the school district materially failed to implement an individual provision in isolation but rather whether the school district materially failed to implement the IEP as a whole.<sup>194</sup> The deviations

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<sup>186</sup> SD-16, p. 200.

<sup>187</sup> Testimony of Special Ed Coordinator.

<sup>188</sup> Testimony of Special Ed Teacher 1. See SD-19, p. 213.

<sup>189</sup> Testimony of Case Manager and Special Ed Teacher 1 & 2.

<sup>190</sup> Testimony of Case Manager.

<sup>191</sup> SD-23, p. 218.

<sup>192</sup> IHO Ex. 31.

<sup>193</sup> *Catalan v. District of Columbia*, 47 IDELR 223 (D.C. 2007) quoting *Houston Independent School District v. Bobby R.*, 200 F.3<sup>rd</sup> 341 (5<sup>th</sup> Cir. 2000).

<sup>194</sup> *Abigail P. v. Old Forge School District*, 124 LRP 21769 (3<sup>rd</sup> Cir 2024). See also, *L. J. v. Sch. Bd. of Broward*, 927 F.3<sup>rd</sup>

1203, (11<sup>th</sup> Cir. 2019).

from the IEP must be material to amount to a denial of FAPE<sup>195</sup> A material failure occurs “when there is more than a minor discrepancy between the services a school provides to a child and the services required by the IEP.<sup>196</sup> There is no statutory requirement “of perfect adherence to the IEP and “minor discrepancies between the services provided and the services called for by the IEP do not give rise to an IDEA violation.”<sup>197</sup> A school district can show substantial compliance by demonstrating the child made progress toward achieving his/her goals, showed improvement in his/her grades and received passing scores on state assessments.<sup>198</sup>

The Parents failed to present any evidence that the District failed to implement the Student’s executive functional goal, the breaking down of large assignments and the use of a digital assignment notebook. The Findings of Fact establish scaffolding was not included as an accommodation in the operative IEPs.<sup>199</sup> In contrast, the District introduced credible evidence that the Student’s executive functioning accommodations and related goal were implemented as written. The record reflects that the Student’s teachers consistently implemented these accommodations with fidelity.<sup>200</sup> The Student regularly utilized his electronic assignment notebook, his usage was monitored and the executive functioning goal was actively addressed.<sup>201</sup> In accordance with the IDEA, the District demonstrated substantial compliance with implementation of the Student’s IEPs because the Student made measurable progress on his IEP goals, including improvement in his executive functioning skills.<sup>202</sup> Additionally, the Student no longer required pragmatic language supports as his skills in that domain had improved to the average range.<sup>203</sup> The Student no longer met the eligibility criteria for Autism as his stereotypical behaviors, behavioral rigidity, social communication and attention were all within age-appropriate norms.<sup>204</sup> Moreover, the Student successfully mastered the core curriculum requirements for 8<sup>th</sup> grade, received above-passing grades in his courses, and exhibited no academic or cognitive concerns.<sup>205</sup> Accordingly, the District met its obligations under the IDEA and there is no basis to conclude a denial of FAPE occurred.

**B. Whether the District failed to include all the required IEP team members at the 1/22/2025 IEP meeting when the case manager failed to attend the meeting in violation of 34 CFR § 300.321 and thus denied the Student a FAPE?<sup>206</sup>**

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<sup>195</sup> *Catalan v. District of Columbia*, 47 IDELR 223 (D.C. 2007). See also, *East Central Bd. of Cooperative Educational Services*, 114 LRP 46711 (CSEA, 2014).

<sup>196</sup> *J. W. v. District of Columbia*, 56 IDELR 125 (D.C. 2011).

<sup>197</sup> *Van Duyn v. Baker School District SJ*, 47 IDELR 182 (9<sup>th</sup> Cir. 2007).

<sup>198</sup> *A. P. v. Woodstock Bd. of Education*, 55 IDELR 61 (2<sup>nd</sup> Cir. 2010).

<sup>199</sup> FOF 8 & 27.

<sup>200</sup> IHO 31, 32, & 33.

<sup>201</sup> IHO 31, 32, & 33

<sup>202</sup> IHO 32, 34, & 35.

<sup>203</sup> IHO Ex. 19.

<sup>204</sup> IHO Ex. 18.

<sup>205</sup> IHO Ex. 36.

<sup>206</sup> IHO Ex. 31.

Under federal regulation 34 CFR § 300.321(a), the IEP team is required to include the parents of the child, at least one regular education teacher if the child participates in general education, and at least one special education teacher of the child. The IEP team is also required to include a representative of the school district who is qualified to provide or supervise the specially designed instruction provided to meet the unique needs of the child, is knowledgeable about the general education curriculum and the available resources.<sup>207</sup> The IEP team is required to include an individual who can interpret the instructional implications of the evaluation results.<sup>208</sup> The child may participate where appropriate.<sup>209</sup> If the meeting involves consideration of postsecondary goals for the child and transition services to meet those goals, the school district is required to invite the child.<sup>210</sup> At the discretion of the parent or the school district other individuals may attend who have expertise regarding the child.<sup>211</sup> The IDEA leaves the decisions as to which special education teacher or general education teachers should be members of the IEP team to the school district.<sup>212</sup> The school district must ensure that the teacher or provider invited to the meeting actually worked with the child.<sup>213</sup>

A member of the IEP team may be excused from the IEP meeting where the parent and school district agree in writing that the attendance of the member is not necessary because the member's area of curriculum or related services is not being modified or discussed in the meeting.<sup>214</sup> A member of the IEP team also may be excused from attending the IEP meeting when the meeting involves a modification to or discussion of the member's area of the curriculum or related service if the parent agrees in writing and the school district consents to the excusal and the member submits in writing to the parent the input into the development of the IEP prior to the meeting.<sup>215</sup>

The Parents have not provided any evidence that the required members of the IEP team were absent from the January 22, 2025 IEP meeting, as mandated by the federal regulations. The Findings of Fact indicate that the meeting was attended by a general education teacher and one of the Student's special education teachers, who co-taught three of the Student's classes and coordinated the implementation of social work services during the Student's weekly small group sessions.<sup>216</sup> Also, present was the Special Ed Coordinator, who is responsible for ensuring that the Student's special education needs and services are met.<sup>217</sup> A representative from L High School, where the Student will attend in the fall, participated in the meeting to

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<sup>207</sup> 34 CFR § 300.321(a)(4)

<sup>208</sup> 34 CFR § 300.321(a)(5).

<sup>209</sup> 34 CFR § 300.321(a)(7).

<sup>210</sup> 34 CFR § 300.321(b)(1).

<sup>211</sup> 34 CFR § 300.321(a)(6).

<sup>212</sup> 71 Fed. Reg. 46,680 (2006).

<sup>213</sup> *R. B. v. Napa Valley Unified School District*, 48 IDELR 60 (9<sup>th</sup> Cir. 2007).

<sup>214</sup> 34 CFR § 300.321(e)(1).

<sup>215</sup> 34 CFR § 300.321(e)(2)(i)(ii).

<sup>216</sup> FOF 22.

<sup>217</sup> FOF 22.

discuss how to support the Student's transition to high school.<sup>218</sup> The Student was also invited to attend.<sup>219</sup> Additionally, the Special Ed Coordinator, the Special Ed Teacher 2, and the Social Worker were present to address the instructional implications of the evaluation results.<sup>220</sup>

The District committed a procedural violation by failing to obtain written parental consent to excuse the Case Manager from the IEP meeting. Although the Case Manager had been invited, the District only secured an oral waiver from the Parents, rather than the required written documentation.<sup>221</sup> However, this procedural error does not constitute a substantive violation of the IDEA. There was no evidence or testimony indicating that the Case Manager's absence resulted in a loss of educational opportunity for the Student or a denial of FAPE. Additionally, the Parents had orally agreed to proceed with the meeting without the Case Manager.<sup>222</sup>

**C. Whether the District's 1/22/25 IEP was not reasonably calculated to enable the Student to make progress in light of the Student's unique circumstances and to receive an educational benefit and thus denied the Student a FAPE specifically as follows because:**

- (i) The District removed the 15 minutes per week of specialized instruction for teaching and monitoring the Student's executive functioning skills to assist the Student in meeting his executive functioning goal;**
- (ii) The District removed the functional safety plan finalized on 9/17/2024 for the Student; and**
- (iii) The District removed the Student's scheduled breaks and replaced the breaks with requested breaks.<sup>223</sup>**

A school district must provide children with disabilities with a free appropriate public education ("FAPE") and to the "maximum extent appropriate with nondisabled children."<sup>224</sup> Under the IDEA, a hearing decision shall be made on substantive grounds based upon whether the child received a FAPE.<sup>225</sup> To determine if the child's IEP complies with the IDEA, a two prong test must be employed.<sup>226</sup> The first prong of the test is to determine if the district has complied with the procedures set forth in the IDEA. The hearing officer can determine the child was denied a FAPE only if the procedural inadequacies impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making

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<sup>218</sup> FOF 22.

<sup>219</sup> FOF 21.

<sup>220</sup> FOF 22.

<sup>221</sup> FOF 21, 22 & 23.

<sup>222</sup> FOF 22.

<sup>223</sup> IHO Ex. 31.

<sup>224</sup> *Beth B. v Van Clay*, 282 F.2d 493 (7<sup>th</sup> Cir.2002). See also, 20 U.S.C. § 1412(a)(1) and 1412(a)(5).

<sup>225</sup> 20 U.S.C. § 1415(f)(3)(E)(i).

<sup>226</sup> See *Bd. of Ed. Of the Hendrick Hudson Cent. Sch. Dist. V. Rowley*, 458 US 206-207. *A. G. and JG v. Bd. of Ed. Of Arlington Cen. Sch. Dist.*, 69 IDELR 210 (S. D. NY 2017).

process or caused a deprivation of educational benefits.<sup>227</sup> The 7<sup>th</sup> Circuit explained that procedural flaws do not automatically require a finding of a denial of FAPE, however, procedural inadequacies that result in a loss of educational opportunity clearly result in the denial of FAPE.<sup>228</sup> The Circuits that have addressed procedural violations have found that procedural defects alone do not constitute a violation of the right to a FAPE unless they result in the loss of an educational opportunity.<sup>229</sup>

The second prong of the test is whether the individualized educational program developed through the Act's procedures is reasonably calculated to enable the child to receive educational benefits.<sup>230</sup> The Supreme Court in *Endrew F. v. Douglas County School District* further clarified the standard previously provided in the Rowley case, and requires the school district to “offer an IEP reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances” in order to meet the substantive obligations under the IDEA.<sup>231</sup> The appropriateness of an IEP “can only be judged by examining what was objectively reasonable at the time [the team created the IEP.]”<sup>232</sup> An IEP may not be determined to be inadequate based upon testimony and evidence that were not before the school district when the IEP was developed.<sup>233</sup>

The Act provides the state and the local educational agencies with the cooperation of the parents with the role of formulating the child's education.<sup>234</sup> The school district, however, has the right to provide children with an education the school district considers more appropriate than the proposed education provided by the parents.<sup>235</sup> School districts are not required to specify a specific instructional methodology in a child's IEP. In *H. R. v. District of Columbia*, 124 LRP 28849 (D.C. D.C. 2024), the Court found that the school district established it could address the child's executive functioning needs with accommodations for chunking, paper adjustments, seating options, checklists, and visual timers rather than with goals and specialized instruction under a reading methodology the parents had requested.<sup>236</sup>

In ascertaining whether a child is receiving a meaningful benefit, the courts look at regular examinations, grades and advancing from grade to grade.<sup>237</sup> The receipt of an education benefit

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<sup>227</sup> 20 USC § 1415(f)(3)(E)(ii).

<sup>228</sup> *Board of Education of Township High School District No. 211 v. Ross*, 486 F.3d 267 (7<sup>th</sup> Cir. 2007).

<sup>229</sup> See, *Schoenbach v. District of Columbia*, 309 F.Supp.2d 71 (D.D.C. 2004)

<sup>230</sup> *Bd. of Education v. Rowley* 458 US 176, 206-207.

<sup>231</sup> *Endrew F. v. Douglas County School District RE-1*, 375 S. Ct. 988 (2017)

<sup>232</sup> *B. G. v. City of Chicago Sch. Dist. 299*, 69 IDELR 177 (N. D. Ill, 2017) (quoting *M. B. v. ex rel. Berns v. Hamilton Southeastern Schools*, 668 F. 3d 851, 863 (7<sup>th</sup> Cir., 2011) (internal citations omitted.)). See also, *District of Columbia v. Walker*, 54 IDELR 271, 109 F. Supp.3d 58 (D.C. D.C. 2015).

<sup>233</sup> *A. G. and JG v. Bd. of Ed. Of Arlington Cen. Sch. Dist.*, 69 IDELR 210 (S. D. NY). See also, *B.L. v. New Britain Bd. of Ed.*, 394 F. Supp.2d 522 (D. C. Conn. 2005)

<sup>234</sup> See, *Lachman v. Maine Township*, 852 F.2d 290 (7<sup>th</sup> Cir. 1988).

<sup>235</sup> *Beth B. v Van Clay*, 282 F.2d 493 (7<sup>th</sup> Cir.2002).

<sup>236</sup> See also, *Benjamin A. v. Unionville-Chadds Ford School District*, 70 IDELR 150 (ED. PA 2017).

<sup>237</sup> *Bd. of Education v. Rowley* 458 US 176, 206-207.. See also *Parker C. v. West Chester Area School District*, 70 IDELR 94 (ED PA 2017).

can be evidenced by academic progress and making progress on the IEP goals.<sup>238</sup> A child's behavior outside of school have no bearing on whether the child is making gains academically and behaviorally in the school setting.<sup>239</sup> The child's progress does not have to be academic in nature to receive a meaningful benefit. In *Sneitzer v. Iowa Department of Education*, 66 IDELR 36295 (8<sup>th</sup> Cir. 2015), the Court found a child who possessed difficulties with following directions, understanding social rules and behavior expectations had received some educational benefit by improving her attendance, having a 4.024 GPA and making academic progress even if the IEP goals were not academic in nature.

In the present matter, the Parents alleged a procedural violation under the IDEA as discussed under Issue b. Upon review, however, the procedural violation asserted does not constitute a substantive violation under the IDEA. The Parents have not met their burden of proof in demonstrating that the January 22, 2025 IEP was not reasonably calculated to enable the Student to make progress appropriate in light of the Student's unique circumstances or that the Student was denied a FAPE. The Findings of Fact establish that the January 22, 2025 IEP was developed upon the triennial reevaluation which comprehensively assessed the Student's current levels of performance and educational needs.<sup>240</sup> Based upon the reevaluation results, the IEP team concluded that the Student no longer met the eligibility criteria under the Autism category and no longer required supports to address his pragmatic language deficits.<sup>241</sup> The IEP team further determined that the Student did not require scheduled breaks to meet his health needs and to access the curriculum.<sup>242</sup> The evidence demonstrates that the Student had developed self-advocacy skills and was independently requesting breaks as needed, thus eliminating the necessity for scheduled breaks in the IEP.<sup>243</sup>

Under the IDEA, the District is not required to continue providing a specific amount of specialized instruction such as the previously included 15 minutes per week of specialized instruction for executive functioning. As in *H. R. v. District of Columbia*, a school district retains discretion in selecting the instructional methods it deems appropriate. In this case, the District determined that the Student's executive functioning needs would be more effectively addressed through instruction delivered in a resource room setting, which would allow the Student to generalize and apply the executive functioning skills with increased independence.<sup>244</sup> This decision fell within the District's discretion and was supported by the Student's progress.

With respect to the functional safety plan, the evidence shows the plan was created outside of the IEP process and was never formally adopted into any of the Student's IEPs.<sup>245</sup> The Parents

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<sup>238</sup> See, *M. B. v. Hamilton Southeastern Schools*, 58 IDELR 92 (7<sup>th</sup> Cir. 2011); *Walczak v. Florida Union Free School District* (2<sup>nd</sup> Cir 1998).

<sup>239</sup> See, *Q. W. v. Board of Education of Fayette County*, 66 IDELR 212 (6<sup>th</sup> Cir. 2015).

<sup>240</sup> FOF 15-20.

<sup>241</sup> FOF 18 & 19.

<sup>242</sup> FOF 24.

<sup>243</sup> FOF 24.

<sup>244</sup> FOF 24.

<sup>245</sup> FOF 14 & 30.

failed to provide any evidence to support the need to include the functional safety plan into the IEP in order for the Student to receive a FAPE.

Lastly, the Findings of Fact show the Student did receive a meaningful educational benefit during the 2024-2025 school year. The Student demonstrated progress on his IEP goals, improvement in executive functioning skills, earned mostly As and Bs, successfully completed the 8<sup>th</sup> grade core requirements and advanced to the 9<sup>th</sup> grade.<sup>246</sup> Based upon the foregoing, the District established that the January 22, 2025 IEP was reasonably calculated to provide a meaningful educational benefit and provided the Student with a FAPE.

**D. Whether the District was required under 34 CFR § 300.503 to provide Prior Written Notice when the safety plan and the scheduled breaks were removed from the 1/22/2025 IEP and thus denied the Student a FAPE?<sup>247</sup>**

Under, the Federal Regulations, school districts are required to provide prior written notice when the school district proposes or refuses to initiate or change the identification, educational placement of the child or the provision of FAPE to the child.<sup>248</sup> The written notice must be provided to a parent within a reasonable time.<sup>249</sup> The Illinois Administrative Code (Code) defines a reasonable time as ten days.<sup>250</sup> The notice must contain the following items:

- (1) “A description of the action proposed or refused by the agency; and
- (2) An explanation of why the agency proposes or refuses to take the action; and
- (3) A description of each evaluation procedure, assessment, record or report the agency used as a basis for the proposed or refused action; and
- (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
- (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; and
- (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and

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<sup>246</sup> FOF 32-36.

<sup>247</sup> IHO Ex. 31.

<sup>248</sup> 34 CFR § 300.503(a).

<sup>249</sup> 34 CFR § 300.503(a)

<sup>250</sup> Ill. Ad. Code 226.250.

(7) A description of other factors that are relevant to the agency’s proposal or refusal.”<sup>251</sup>

The notice also must be written in language which is understandable to the general public and in the parent’s native language.<sup>252</sup> A revised IEP can constitute prior written notice if the document meets the requirements under 34 CFR § 300.503(a).<sup>253</sup> OSEP explained a school district can meet the notice requirement by providing the parents with its notice form and referencing the IEP for the actual changes.<sup>254</sup> Changes to student specific plans such as a student safety plan do not need to be modified through an IEP meeting where a parent and the district agree to modify the safety plan without holding an IEP meeting.<sup>255</sup>

The Parents have failed to present any evidence that the Safety Plan was incorporated into the Student’s IEPs to trigger the prior written notice requirements under the IDEA.<sup>256</sup> The Parents have also failed to prove that prior written notice was not provided with respect to changes in the Student’s breaks. The District maintains that the Student’s previous IEPs did not include scheduled breaks.<sup>257</sup> However, the Findings of Fact indicate there was a change with the Student’s breaks over time.<sup>258</sup> Specifically, the Student’s December 21, 2023 IEP stated that breaks could be provided as the discretion of the special education teacher.<sup>259</sup> The February 20, 2024 IEP added the Student may be assigned a bathroom schedule and teacher prompts could be used to assist with bathroom visits.<sup>260</sup> The January 22, 2025 IEP revised the language to allow the Student to request the breaks on his own initiative.<sup>261</sup> Despite the evolving language, the testimony established that the District never implemented a formal bathroom schedule as the Student had been able to self-advocate his bathroom breaks.<sup>262</sup> Nevertheless, because the language regarding breaks changed and the Parents had specifically requested scheduled breaks, the prior written notification requirements under the IDEA and

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<sup>251</sup> 34 CFR § 300.503(a).

<sup>252</sup> 34 CFR § 300.503(c).

<sup>253</sup> See, *El Paso County SD 2*, 113 LRP 44602 (CSE, 2013).

<sup>254</sup> *Letter to Lieberman*, 52 IDELR 18 (OSEP, Aug. 15, 2008).

<sup>255</sup> See, *Shoreline School District*, 120 LRP 30791 (WSEA 2020).

<sup>256</sup> FOF 14 & 30.

<sup>257</sup> FOF 28.

<sup>258</sup> FOF 9, 10 & 28.

<sup>259</sup> FOF 9.

<sup>260</sup> FOF 10.

<sup>261</sup> FOF 28.

<sup>262</sup> FOF 28.

the Code were triggered. In compliance with the federal regulations, the Notification of Conference Recommendations and the January 22, 2025 IEP met the prior written notice requirements.<sup>263</sup> The finalized IEP was provided to the Parents within ten days of the January IEP meeting, satisfying the requirement of providing notice within a reasonable time frame.<sup>264</sup> The Findings of Fact unequivocally establish the Notification of Conference Recommendations and the finalized IEP complied with the notice requirements with the federal regulations.<sup>265</sup> Accordingly, the District met its obligations under both the IDEA and the Code governing prior written notice.

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

1. The Parents' claims and requested relief are hereby denied.

#### **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.

Dated: August 9, 2025

Leah Trinkala  
Impartial Hearing Officer

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<sup>263</sup> FOF 29.

<sup>264</sup> FOF 29.

<sup>265</sup> FOF 29.



**APPENDIX A**

██████████ v. ██████ CCSD ██████

ISBE Case No. 2025-DP-0204

Child/Student	██████████
Location of the Hearing	Remote Hearing
H Junior High	██████████ Junior High School
L High School	██████████ High School District ██████
Parent/Father	██████████
Mother/Parent	██████████
Social Worker	██████████
Special Ed Coordinator	██████████
Special Ed Teacher 2	██████████
Case Manager	██████████
Special Ed Teacher 1	██████████
School Psychologist	██████████

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the Final Decision and Order was sent to the District through its respective counsel identified below and to ISBE by UPS (signature required) and electronic mail and a true and copy of the Final Decision and Order was mailed to the Parents by UPS (signature required) and directed to:

Laura Sinars & Jessica Carbonaro, Esqs.  
Robbins Schwartz



and



*Electronic Mail: dwisniew@gmail.com*

and

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

On August 9, 2025

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Leah M. Trinkala  
Impartial Hearing Officer

