BEFORE THE WEST VIRGNIA DEPARTMENT OF EDUCATION
OFFICE OF FEDERAL PROGRAMS
DUE PROCESS HEARING OFFICER
DUE PROCESS NO. 24-018

Student/Party Requesting Due Process:	[redacted]
Initial Party Requesting Due Process:	[redacted]
Counsel for Student:	[redacted]
Local Education Agency (LEA):	[redacted]
Counsel for LEA:	[redacted]
Hearing Location:	[redacted]
Hearing Dates:	14-15 August 2024
Type:	Closed
Transcription:	Court Reporter
Student Present:	[redacted]
Hearing Officer:	[redacted]

[1] [redacted]

Witnesses for Student: [redacted]

Witnesses for LEA: [redacted]

Transcript Received: Wednesday, 11 September 2024

Proposed Findings, Conclusions, and Argument Received: Wednesday, 25 September 2024

Decision Issued: Wednesday, 9 October 2024

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DECISION

The West Virginia Department of Education Office of Federal Programs ("WVDE OFP") designated the undersigned to serve as an impartial hearing officer in the above-referenced matter. An evidentiary hearing was conducted on 14 and 15 August 2024 at a location agreed to by the parties. The hearing was recorded and transcribed by a certified court reporter.

The purpose of the hearing was to consider evidence related to Student's/Parent's[2] due process request.[3] Student/Parent were represented by counsel, as was the Local Education Agency ("LEA").

Procedural History

On 17 May 2024, the undersigned was notified of assignment by the WVDE OFP of this due process hearing request and contacted by the parties by letter dated 20 May 2024. The letter contained various dates and deadlines, including an initial status conference date of Wednesday, 12 June 2024 and a due process hearing start date of Wednesday, 10 July 2024.

During the initial status conference on 12 June 2024, counsel for the Student/Parent requested a continuance of the hearing start date because of a scheduling conflict. The LEA did not object, and, for good cause shown, the hearing start date was moved to Monday, 5 August 2024.

[2] Under West Virginia Department of Education student confidentiality policies, all names of individuals and entities personally identifiable to/with the student are removed and titles and functions are substituted for names. The cover sheet identifies the actual names.

[3] The Student turned eighteen years-old during the pendency of this litigation and adopted the due process complaint as their own. Accordingly, this case, as discussed in this decision, is moving forward in the Student's name.

On 25 June 2024, the undersigned, without objection by counsel for the Student/Parent, granted a second continuance, this time requested by counsel for the LEA, for good cause shown because of a key witness's unavailability. The new hearing start date was set for Wednesday, 14 August 2024. The parties agreed the hearing location would take place at the LEA's main offices. The Student elected not to be present at all times and to have the hearing closed.

On 7 August 2024, the parties filed witness and exhibit lists, and the undersigned held a final status conference with the parties on Monday 12 August 2024. At the final status conference, the parties discussed the issue that the Student had turned eighteen (18) years-old during the pendency of this case, which would make the case the Student's, rather than the Parent's, assuming he agreed to assume it. The Hearing Officer stated that he would approve substitution of the Student for the Parent after verifying at the hearing that the Student adopted the Due Process Request and wished to move forward with a hearing to resolve those issues.

The hearing was held on Wednesday, 14 August 2024, and Thursday, 15 August 2024. At the beginning of the hearing, the Hearing Officer heard from the Student, who indicated that they adopted the Due Process Request and wished to be substituted for the Parent and to proceed with the hearing. Accordingly, the Hearing Officer granted the request to substitute the Student for the Parent as Petitioner and moved forward with the hearing.

At a post-hearing conference held on Wednesday, 21 August 2024, the parties discussed the final decision deadline. At the end of that discussion, the parties agreed that they should be given two weeks from the date of receipt of the hearing transcript to submit proposed findings of fact and conclusions of law and arguments in support of their respective positions and that the Hearing Officer should issue as decision within two weeks of receiving their proposed findings of

fact and conclusions of law and arguments. The parties also agreed to discuss plans for the student while they awaited the Hearing Officer's decision.

The hearing transcript was received by the parties on Wednesday, 11 September 2024. Accordingly, the Hearing Officer, through an order dated 13 September 2024, set the deadline to submit proposed findings of fact and conclusions and arguments as Wednesday, 25 September 2024, and the deadline for a final decision as Wednesday, 9 October 2024.

Motions

All decisions rendered during the aforesaid pre-hearing conferences, at the hearing, and at the post-hearing conferences, commemorated in various letters and orders, are hereby affirmed.

Issues

The following issues to be decided were identified by the undersigned at the final status conference.

1. Should the Student be substituted for the Parent as a party in this matter?
2. Did the Student, as part of a Free Appropriate Public Education ("FAPE"), receive appropriate planning and services for transition to postsecondary education, training, and employment consistent with the requirements of the Individuals with Disabilities Education Act ("IDEA") and West Virginia Department of Education Policy 2419 (126 W. Va. C.S.R. § 16) ("Policy 2419") in the least restrictive environment?
3. If not, what would the appropriate remedy for the denial of FAPE in this context be?

Credibility of Witnesses, Testimony, and Exhibits

The Hearing Officer was and is satisfied that all records and documents entered as exhibits are now complete, authentic, and valid and that they were entered with proper evidentiary

foundations. The hearing officer was and is satisfied that the witnesses presented by both parties were credible and truthful except as inconsistent with this decision. Each witness attempted to answer questions asked to the best of their ability and to provide the truth as perceived in their recollections. Neither the demeanor of the witnesses nor the substance of any testimony suggested any inconsistency, conflict, or ulterior motive except as noted below. No evidence suggested any personal gain to be achieved by any witness as a result of testifying except as noted below.

Findings of Fact and Conclusions of Law

After reviewing the record and the exhibits admitted into evidence, assessing the credibility of the witnesses, and weighing the evidence, this Hearing Officer makes the following findings of fact and conclusions of law. To the extent the testimony of any witness is not in accord with these findings and conclusions, such testimony is not credited. Any proposed finding of fact, conclusion of law, or argument proposed and submitted by the parties but omitted herein is deemed irrelevant or unnecessary to the determination of the material issues in this matter.

Findings of Fact

1. The Student, who is 18 years-old, lives with their Parent. (Due Process Request ("DPR") ¶ 5.)

2. The Student has been diagnosed with various conditions including autism spectrum disorder (ASD), attention deficit hyperactivity disorder (ADHD), sensory integration disorder, and has a number of physical disabilities, including fine motor deficits, trouble with coordination, and encopresis. (Hearing Transcript ("Tr.") at 116-17.)

3. The County School System is a local education agency ("LEA"). (DPR ¶ 7.)

4. The Student attended schools in the LEA from childhood through graduation in May 2024, including a local high school from ninth through twelfth grades. (Tr. at 586, 596.)

5. The LEA repeatedly identified the Student as eligible for special education services under the IDEA and Policy 2419. (*See, e.g.,* Joint Exhibit ("JE") 15, at 000262-63; JE 24, at 000368; JE 26, at 000390.)

6. West Virginia's form Individualized Education Program ("IEP") includes transition services requirements and, from age 14, the Student's IEPs included transition planning. (JE 11, at 000212-213; JE 13, at 000240-241; JE 17, at 000285, 0000287, 000291, 000296; JE 18, at 000314, 000320, 000324; JE 24, at 000372, 000379, 000393.)

The IEPs

7. The Parent generally participated in the Student's IEP meetings throughout their tenure in LEA schools. (Tr. at 186; JE 24, at 000368.)

8. In the fall of 2020,[4] at 14 years old, the Student entered their freshman year at the LEA's local high school. (JE 26, at 000389.)

9. An IEP meeting was held on October 1, 2020, attended by the Parent, a general education teacher, an administrator, an autism mentor, a special education teacher, a behavioral specialist, a school psychologist, and a representative from the West Virginia Division of Rehabilitation Services ("DRS"). (JE 26.)

10. Of import to the remaining findings, the Hearing Officer came away appreciating the close collaboration between the LEA and the DRS both generally and in connection with

[4] As stated in the conclusions of law, the Hearing Officer includes some facts that fall outside the applicable statute of limitations primarily for context.

services specifically provided to the Student here. In this LEA, the DRS acts as a very active and engaged partner of the LEA. (Tr. at 396, 400, 406, 412.)

11. Although the Student did not attend the October 1, 2020, meeting, the IEP team considered their post-secondary preferences and interests by reviewing a student survey they had taken. Based upon that assessment and other information, it was determined that the Student's educational program would lead to a standard diploma with a non-CTE personalized program of study. (JE 26, at 000394.)

12. The Student's agreed-upon "appropriate measurable post-secondary goals" were: "(1) Education/Training Goals: After high school, [the Student] will pursue a career as a Cargo and Freight Agent; (2) Employment Goals: After high school, [the Student] will gain employment as a Cargo and Freight Agent. Independent living skills goals were not identified by the team as appropriate at that time. 'Transportation, Distribution and Logistics' was identified as the Student's Career Cluster based upon assessments and interests, which aligned with the state-approved personalized program of study." (*Id.*)

13. With respect to activities and linkages associated with these goals, the following services were specifically identified: (1) "Research caree[r]s using surveys of interest to [the Student] by the school; and (2) working toward career goals by the parent/student and DRS. (*Id.* at 000395.)

14. The IEP goals also included behavioral goals that would assist the Student in both secondary and postsecondary activities and life more generally. They included expressing thoughts in an age-appropriate and setting-appropriate manner; thinking rationally, even when frustrated; and initiating and remaining on tasks requiring sustained attention of twenty (20) minutes or more. (*Id.* at 000405.)

15. As indicated in the Student's Personalized Education Plan (PEP), developed in their ninth (9th) grade year and consulted throughout their high school career, the Student's interests were assessed using the Pathways WV assessment tool (Pathwayswv.org), and their aptitudes were assessed using the PSAT taken in 9th grade. (*See* JE 9.)

16. On September 9, 2020, the fall of their freshman year, the Student took the O*NET Interest Profiler, an assessment that allows students to "explore the world of work and identify careers that may satisfy what is important to [them] in a job . . ." (*Id.* at 000199-200.)

17. On March 17, 2021, the spring of their freshman year, the Student's top career pathways, based upon the interests expressed in the Kuder Career Interests Assessment, were identified as Professional Support Services; Information Support and Services; Therapeutic Services; Teaching and Training; and Legal Services. (*Id.* at 000155.)

18. On May 21, 2021, an IEP meeting was held to plan for the Student's sophomore year. The Student, their uncle, a regular education teacher, special education teacher, and administrator all attended this meeting. (JE 24, at 000368.)

19. The Student's interests were considered based upon their input as well as the Pathwayswv.org assessments. (*Id.* at 000372.)

20. Post-secondary goals were again developed for the Student in the areas of education/training and employment. *Id.* The need for an annual goal for the Student in counseling for transition and postsecondary program, vocational aptitude/interest assessment was identified, as well as DRS referral for post-secondary employment and/or education. (*Id.* at 000373.)

21. The IEP notes that, in the Student's present levels of performance, the Student "is able to access the community in a safe and respectful way." With respect to transition, it notes that the Student's "qualifications for specialized instruction for behavior/social support and

mathematics due to their diagnosis of having Autism will require that they have access to assistance, resources, and an outside agency in order to explore job options after completing high school." (*Id.* at 000378-79.)

22. At the May 21, 2021, IEP meeting, the team identified plans for Skill Building/Long Term Plan, including:

> 1. Self-Advocacy
>
> During behavioral intervention (weekly), practice self-advocacy skills. With Teacher of Record (TOR), [the Student] will practice asking for help when [they don't] understand a concept being taught or when [they are] feeling down/frustrated, [they] will let the teacher know and take a 5-10 minute break. This can be practiced through the use of individual role-play as well as group role-play.
>
> 2. Social Skills
>
> One time per week, [the Student] will work with TOR on individual and group social skills through role-play and practice.
>
> 3. Organizational Skills
>
> [The Student] will have designated binders/folder for [their] classes. Once every week, with [their] TOR/aide, [they] will organize [their] binders/folders to stay up to date and organized.

(*Id.* at 000381.)

23. On March 11, 2022, the Student's Work Values Inventory was revisited based upon their assessments of preferred activities and interests. (JE 23, at 000354.)

24. In addition, the Student participated in the following daily living activities during their sophomore year (2021-2022): began discussing personal hygiene; was offered hygiene items (toothpaste, brushes, soap, deodorant); discussed organized daily routine; was provided clothing when they expressed the need; attended the Carnegie Science Center; took a food preparation class (safe cooking and preparing basic dishes, kitchen, appliance safety); discussed proper diet and exercise (he expressed a desire to become more healthy); encouraged fluids, fruits, vegetables;

increased daily walking; evaluating hygiene daily; progress/regress determined by objective signs and student self-support. (JE 22, at 000349.)

25. The IEP team met again on May 16, 2022, to plan the Student's junior year in high school. The meeting was attended by the Student, the Student's parent, an administrator, a DRS representative, a general education teacher, a special education teacher, and an aide. (JE 18, at 000308.)

26. The IEP team looked at the Student's interests after secondary school. This time, the Student indicated they wanted to be a cosmetologist based on their Pathwayswv.org assessment. The IEP team changed their education/training goal to "After high school, [the Student] will participate in on-the-job training to become a Cosmetologist." Their employment goal likewise was changed to read: "After high school, [the Student] will go to work as a Cosmetologist." (*Id.* at 000313, 000320.)

27. This change was also reflected in the Student's annual goals. Goal No. 1 provided that the Student, working with their Teacher of Record (ToR) would "explore career information and requirements needed to become a cosmetologist" at least one time. The plan also contained two behavioral goals: (1) to express concerns, needs, or thoughts in an age-appropriate and setting-appropriate manner; and (2) to develop various learning skills, including executive functioning, maximizing learning, accessing supports, and working independently and collaboratively. (*Id.* at 000324.)

28. In addition to mastering these goals, during the 2022-2023 school year, the Student: participated in a cosmetology assembly, attended a campus tour at WVU, continued discussing personal hygiene, was provided hygiene items (toothpaste, brushes, soap, deodorant), discussed organized daily routine, was provided clothing when they expressed the need, continued evaluating

hygiene daily, had progress/regress determined by objective signs and student self-reporting, discussed proper diet and exercise (having expressed a desire to become more healthy); encouraged fluids, fruits, vegetables; increased daily walking, attended the Weirton Area Chamber of Commerce Symposium, and participated in a dance demonstration with instruction. (JE 9, at 000149-50.)

29. The IEP team met again on May 16, 2023, to prepare an IEP for the Student's senior year. Those in attendance at the May 16, 2023, meeting included the Student, the Student's parent, an administrator, a DRS representative, a general education teacher, and a special education teacher. (JE 17, at 000270.) At that time, the Student and their Parent were notified of the transfer of student rights at the age of 18. (JE 16, at 000264.)

30. As in all previous years, the IEP team determined that the Student was on track for a regular diploma. JE 17, at 293.) Again, the Student's interests and assessment through Pathwayswv.org were considered in developing their transition goals. The Student's identified education/training goal was "After completion of high school, [the Student] will join the military." Their employment goal was "After completion of military requirements, [the Student] will become a military/infantry officer." Activities were identified to support these goals, including referral to DRS.

31. The following targeted standards and annual goals were selected by the IEP team:

<u>Standards</u>:

> Achieve School Success: Exhibit personal responsibility to maximize learning; Maintain attitudes, dispositions, and behaviors that enhance focus and success; Apply goal setting techniques to maintain self-directed learning; Use self-advocacy, school, and community resources and support services as needed. (Code: DSS. 9-12.8)
>
> Determine, represent and analyze mathematical models for investments involving simple and compound interest with and without additional deposits (Code: M.AMM.FI.2)

Research and analyze personal budgets based on given parameters (Code: M.AMM.FI.4)

Annual Goals:

Area: ADTLCONT

By the end of the 2023-24 school year, working with [their] teacher of record and given research opportunities [the Student] will research [their] chosen career in depth to explore salary range, job availability, and requirements in the area [they] plan[ ] to apply during 3 opportunities through the use of pathwayswv.org with teacher observation and support during that time.

Area: BEHV (marked critical)

By the end of the 2023-24 school year, given instruction, feedback and support [the Student] will exhibit personal responsibility to maximize learning in 4 out of 5 support areas. With teacher observation and data collection.

Area: BEHV

By the end of the 2023-24 school year, given instruction, feedback and support [the Student] will use self-advocacy to explain, in an age-appropriate manner, wants and needs that will maximize [their] effort in the classroom in 80% of (8 out of 10) opportunities with data collection and teacher observation.

Area: MATH (marked critical)

By the end of the 2023-24 school year, given small group instruction and teacher modeling, [the Student] will research and analyze personal budget based on given instruction/parameters with 70% accuracy on classroom assignments and assessments.

Area: MATH

By the end of the 2023-24 school year, given small group instruction, teacher modeling, and reinforcement, [the Student] will analyze mathematical models for investments involving simple and compound interest with 75% accuracy on classroom assignments and assessments.

(JE 17, at 000295-296.)

32. In addition to the goals developed in the May IEP, during their senior year, the Student continued discussing personal hygiene, was offered hygiene items (toothpaste, brushes, soap, deodorant), discussed organized daily routine, was provided clothing when they expressed

the need, continued evaluating hygiene daily, [their] progress/regress determined by objective signs and student self-report, discussed proper diet and exercise, having expressed desire to become more healthy, encouraged fluids, fruits, vegetables; increased daily walking, attended the Weirton Area Chamber of Commerce Symposium, and participated in a dance demonstration with instruction. (JE 17, at 000350.)

33. On March 5, 2024, the IEP team met again to review the Student's current educational performance, updated goals, supports and services. Those in attendance included two school counselors, a regular education teacher, a special education teacher, two administrators, a DRS employee, the Student and the Student's Parent. (JE 14, at 000235.) In that meeting, two months prior to graduation, the Student's Parent discussed the desire for the Student to remain in high school for another year, citing the Student's low math score on the SAT and the validity of a grade they received in 10th grade math as grounds for them to remain in high school. (*Id.* at 000258.)

34. At the March 24, 2024, meeting, with respect to transition planning, the IEP team again considered the Student's interests based upon Pathwaywv.org and O*Net assessments, as well as a virtual reality camp – simulated job field. The Student's postsecondary education/training goal was identified as "After completion of high school, [the Student] will attend college in the field of criminal justice." The Student's postsecondary employment goal was identified as "After completion of criminal justice requirements, [the Student] will become a public defender." The IEP team also identified an independent living goal as: "After completion of high school, [the Student] will live in a dorm." (JE 13, at 000240-41.)

35. During the 2023-2024 school year, in addition to mastery of IEP goals, the Student completed a Job Readiness Map – Standard Edition (JE 9, at 000151-53); an interest and skills composite report (*id.* at 000154-55); and research into legal services (*id.* at 000156-62.)

36. The Student researched Fairmont State University (JE 7, at 00013-44) as a possible college, with support of the Autism Individualized Mentoring & Support Services ("AIMSS") program. Other than the Student's Parent, no other team member expressed the belief that the Student was not on track to graduate.

37. The IEP team met again on April 18, 2024, and made arrangements for the Student to retake the SAT. The Student did not attend this meeting, at the Student's and the Parent's request. (JE 11, at 000207.) The Student did, in fact, retake the SAT in June of 2024, raising their score from a 970 to a 1200. (JE 2, at 000012.)

38. During their high school career, the Student amassed 405 work-based learning hours in business and 135 work-based learning hours in engineering. The Student participated in the NuSkool Scholars Camp, which featured camps on Introduction to Self-Advocacy; Financial Literacy; and Virtual Career Exploration (JE 7, at 000118-38) and completed job exploration through work programs at an animal shelter and a local restaurant. (JE 2.)

39. On May 9, 2024, a notice of IEP meeting to participate in an exit/summary of performance meeting was provided to the Student's Parent. The meeting was scheduled for May 16, 2024, at 12:45, but the Parent called to cancel that meeting. (JE 4, at 000026.) The meeting was ultimately held on May 23, 2024, with the Parent declining to come. At the May 23, 2024, meeting, the Student's transcripts, IEPs, exit summary, and summary of performance were reviewed. It was determined that the Student met all Policy 2510 graduation requirements, earning a regular diploma, and that all of the Student's IEP goals had been accomplished. Thus, because

the Student had earned the necessary credits to graduate, they would no longer be eligible for special education and related services. (JE 4.)

40. As part of the May 23, 2024, meeting, an exit survey completed by the Student was reviewed. In the survey, the Student acknowledged participating in a work program through DRS and participating in chorus, an extracurricular activity. The Student further acknowledged that special education services were helpful to them in general education classes, that their ideas and suggestions were considered and included in their most recent IEP, that they were comfortable discussing their special needs and asking for help, that they planned on living in a dormitory or on a military base, that they planned to attend a four-year college and to seek supports through DRS and request accommodations through the ADA/Section 504. (JE 4, at 000031.) The Parent portion of the survey was sent home twice but never returned. (*Id.* at 000032-33.)

41. All of this information was discussed in a special education Exit meeting held on May 23, 2024. Following the meeting, the LEA again attempted to meet with the Parent and scheduled a meeting for May 30, 2024. (JE 4, at 000024.) Again, the meeting was declined based on pendency of the Due Process Request. *Id.*

Witnesses

With the exception of the Parent, no witness at the hearing held on 14-15 August 2024, presented testimony or other evidence indicating that the LEA failed in its duty to provide the Student with appropriate transition services consistent with its duties under the IDEA and Policy 2419.

42. The Student briefly testified that they understood that, having turned 18, they have the right to pursue the case and "absolutely" want to do so. (Tr. at 10.) The Student signed a power

of attorney allowing both the Student and their Parent to make decisions regarding the hearing and the case. (*Id.* at 10-13; Hearing Officer Ex. 1.)

43. The Student expressed an interest, if they return to the LEA for another year, in taking driver's education, learning to write properly formatted papers, and learning to sit for long periods in a lecture setting. (Tr. at 21, 23-25.)

44. The Executive Director of Fairmont State University's Autism Individualized Mentoring and Support Services ("AIMSS") Program explained that the AIMSS program provides support services for students on the autism spectrum. (*Id.* at 41-42.) Once students have been fully admitted to Fairmont State University, the AIMSS program provides academic and executive skills supports, including supporting a student's ability to manage the work, transitioning from high school to college, and balancing and prioritizing working independently. (*Id.* at 43.) The program provides some life support skills but does not provide supervision in the dorms. *Id.*

45. The AIMSS program helps students get to class, manage assignments, and be motivated during challenging times. It provides mentors who are on call from weekday mornings until 7:00 at night. (*Id.* at 47.) For students with sensory-related issues who struggle with emotional regulation, the AIMSS program provides sensory rooms for students to calm down. (*Id.* at 50-51.)

46. The AIMSS program has an 80 percent graduation rate.[5] (*Id.* at 52.) They continually work to build transition skills to help students transition to college more effectively and to learn to reach out for help with needed. (*Id.* at 52-53.) AIMSS provides a SOAR orientation class for students and their mentors. (*Id.* at 54.)

[5] The Hearing Officer takes judicial notice that this percentage is significantly higher than the graduation rates of West Virginia institutions of higher education as reported by the West Virginia Higher Education Policy Commission.

47. While the Student has not applied to the AIMSS program at Fairmont State, their SAT scores and GPA are sufficient to qualify for admission. (*Id.* at 57-58.)[6]

48. West Virginia University and Marshall University also have autism support programs, and Marshall University is the leader in autism training and mentoring. (*Id.* at 66-67.)

49. The Student's personal counselor since January 17, 2019, when the Student was in middle school, testified at the hearing. (*Id.* at 70-74.) He explained the Student was originally diagnosed with generalized anxiety disorder and autism spectrum disorder, with ADHD later added. (*Id.* at 74.)

50. The Student's counselor has seen progress in the Student's development over the years, but has concerns about the Student's ability to get along with roommates and independently organize their schedule in a college dorm setting. (*Id.* at 77-80.) In his opinion, the Student is very intelligent and has the skills to be successful academically in a college setting. (*Id.* at 81.)

51. The Student's counselor explained ASD and ADHD using DSM-5-TR, a diagnostic and statistical manual of the American Psychiatric Association. (*Id.* at 82-88; JE 53.)

52. While the Student needs help in some areas, such as improving social skills, functioning in an employment setting, and understanding medical health and wellness, with motivation, the Student can work and make progress in those areas. (Tr. at 98-99.) Persons with ASD, ADHD, and other issues generally have to work on such skills all their lives. (*Id.* at 100-01.)

53. The counselor expects to continue to see the Student for as long as needed; the counselor's services will not end with graduation. (*Id.* at 107.) The counselor does not believe the

[6] The Hearing Officer takes judicial notice that the Student's grades and test scores are also sufficient to qualify them for admission at all or almost all public institutions of higher education in West Virginia, including Marshall University.

Student could live in a dorm setting without adult or other support onsite, but could be successful with such support. (*Id.* at 109-110.)

54. The Student's long-time pediatrician also testified. (*Id.* at 116.) She explained that the Student was diagnosed with autism, Level 1, in third grade. (*Id.* at 117.) The Student had ongoing ADHD, sensory symptoms, anxiety symptoms, and encopresis. (*Id.* at 118.) The Student began medication by third grade for ADHD, anxiety, and depression and continues on such medication to this day. (*Id.* at 120.) As the Student has gotten older, they have become good at expressing anxiety symptoms. (*Id.* at 121.)

55. The Student's pediatrician last saw the Student in November or December 2023, and her physician's assistant saw the Student in April 2024 for an ADHD medication visit. (*Id.* at 121, 141.) While she believes the Student still needs help with issues such as hygiene, the Student has made improvements in those areas. (*Id.* at 130-131.) Indeed, the Student's sense of hygiene has progressed from elementary to middle school to high school. (*Id.* at 139-140.)

56. The Student's pediatrician has had no discussions with school officials about the Student. As the Student has progressed to high school, she has not been active with the Student's school planning. (*Id.* at 144) As she explained, difficulty with transition is a hallmark of the Student's medical diagnoses and while she hopes for continued improvement, the Student will always struggle to some extent. (*Id.* at 144-145.)

57. The Student's Parent testified that, at home, the Student needs a great deal of prompting to get a task done, needs help getting ready for school, getting to the special education bus, etc. (*Id.* at 160-162.) According to the Parent, the student has only one friend and does not interact well with other students in social settings. (*Id*. at 165-166.)

58. The Student's Parent has concerns about the Student living independently, including safety concerns, such as putting out a stovetop fire, and concerns about their naivete – *e.g.,* being given alcohol or otherwise taken advantage of. (*Id.* at 168-169.)

59. The parent's primary academic concerns are that the Student cannot sit in a lecture setting and process information and cannot write a properly formatted paper, having written only one in high school. (*Id.* at 169-170.) If the Student cannot do such basic things, the Parent fears they may shut down and flunk out. (*Id.* at 170-71.)

60. The Student's Parent testified about the content of various IEPs. While the IEPs largely speak for themselves and some were operational well before the time period at issue in this proceeding, below is a summary of some of the parent' assertions.

a. The October 1, 2020, IEP, for the Student's freshman year, states that they will pursue a career as a cargo and freight agent although the Student never expressed an interest in that job. (*Id.* at 177-178; JE 20.) No independent living goals are listed. The Student's parent attended the October 1, 2020, IEP meeting.

b. Another family member, rather than the parent, attended the May 21, 2021, IEP meeting, creating the plan for the Student's sophomore year. (Tr. at 185-186.) The IEP again lists cargo and freight agent as the employment goal and no independent living goals. (*Id*. at 187-188.) The evaluation referenced in the IEP came from the Social Security Administration and was not done by the LEA. (*Id*. at 189-190.) The IEP contains nothing related to transition planning. (*Id*. at 192.)

c. The Student's Parent attended the May 16, 2022, IEP meeting creating a plan for the Student's junior year. (*Id.* at 195-196; JE18.) The listed career goal is cosmetologist, despite the fact that the Student's fine motor skills, such as using scissors,

would make such a career difficult. (Tr. at 197-98.) Further, cosmetology requires additional schooling and could not be accomplished by on-the-job training. (*Id.* at 198-199.) The IEP otherwise continues the same information contained in prior IEPs and again contains no workplace readiness training, no self-advocacy training, or independent living. The counseling for transition to post-secondary education only lists "research careers on pathways West Virginia." (*Id.* at 200-01.)

d. The Student and Parent attended an IEP meeting on May 16, 2023, to plan for the Student's senior year. (*Id.* at 227; JE 17.) The IEP lists the military as the Student's career goal, which is not realistic due to their medical needs. (Tr. at 228-229.) The Parent asserts the IEP team was not receptive to the Student's parent's concerns about the military career goal. (*Id.* at 230.) Again, the IEP contains no independent living goals, workplace readiness training or instruction, or counseling for transition. (*Id*. at 232.) The IEP repeats prior goals and contains nothing to prepare the Student for joining the military. (*Id.* at 236-237.)

61. The Student attended a career fair to further their interest in cosmetology, but no other services were provided relating to this career path. (*Id.* at 205-06.)

62. In their junior year, the Student went on a field trip to the Country Roads Program at West Virginia University, a program designed to enable people with ASD to go to college. (*Id.* at 207.) The Student had a great experience and began to express an interest in college. (*Id.* at 214-15.)

63. The Student had a "phenomenal" relationship with a one-on-one aide, who worked with them from tenth grade to April of their senior year. (*Id.* at 207-209, 212.) The aide was able

to assist the Student with their emotional needs as well as getting them from classroom to classroom and being prepared. (*Id.* at 210-11.)

64. The Student was never able to take career-technical classes because of the emphasis on getting their math grade up, which was accomplished. (*Id.* at 224-25.)

65. In the summer after their junior year, the Student participated in a DRS Nuskool program where they worked with a mentor at a restaurant and a local animal shelter. (*Id.* at 237-241; 336.) That experience convinced the Student of the need for a college education. (*Id.* at 241.)

66. During their senior year, the Student participated in an FBI Teen Academy discovered by the Parent and facilitated with help from the school principal and the LEA, which was a very positive experience. (*Id.* at 241-249; Ex. 38.) The Student also participated in a business symposium through the school that gave them confidence. (Tr. at 257-258.)

67. The Student continues to suffer from lack of dexterity in connection with activities such as washing dishes, using scissors, dressing, and tying shoes—problems that have not improved over time. (*Id.* at 252-256.)

68. Based upon the Student's continuing struggles with math, DRS hired a "phenomenal" high school math teacher to provide tutoring services (*id.* at 268), boosting the Student's math score on the SAT by 130 points (*id.* at 339). However, the Student's parent continues to question the Student's math scores and ability. (*Id.* at 270-72.)

69. An IEP meeting held on March 5, 2024, attended by the Student and Parent, lists the goal that the Student will attend college in the field of criminal justice. (*Id.* at 282-283.) The Student's parent takes issue with the listing of "Public Defender" as the postsecondary goal as the Student does not want to defend criminals. (*Id.* at 284-85.) The IEP further contains an independent living goal that the Student will live in a dorm. (*Id.* at 285-286.) The Student's Parent asserts she

was told at the meeting that the Student has all their credits, and the LEA is not allowed to provide them with further education. (*Id.* at 296.)

70. When the Student's personal aide was absent in April of their senior year, the Student had issues and soiled themselves at school. (*Id.* at 290-292.) Later the aide started assisting the Student again on a more limited basis. (*Id.* at 299.)

71. The Parent learned from the DRS counselor about the AIMSS program at Fairmont State University, which is based upon the autism program at Marshall University. (*Id.* at 299-300.) The Student visited the AIMSS program and was "super impressed." (*Id.* at 301.) The Student has not applied to the AIMSS program and needs a more recent assessment to do so. They plan to apply to Fairmont State University and the AIMSS program next year. (*Id.* at 303-04.)

72. The LEA offered psychological testing after graduation, which the Student's parent declined. (*Id.* at 327, 332.)

73. The DRS vocational counselor who serves the Student's high school also testified. (*Id.* at 393.) She provides transition services for students from high school to the next step, either employment or further education, working closely with teachers and case managers. (*Id.* at 394.) The Student enrolled with DRS in October of 2022. Even prior to that time, however, the DRS counselor had attended the Student's IEP meetings.

74. Since October of 2022, the DRS counselor has worked with the Student exploring career interests and doing O*NET, Profilers, Occupational Outlook, etc. (*Id.* at 396.) She has worked closely with the Student's teachers to achieve their post-secondary goals. (*Id.*)

75. Since October of 2022, the DRS counselor met with the Student at least once a month if not more and provided camps in which the Student participated. (*Id.* at 397.) During such camps, she is there for the full two or three-day session. (*Id.*)

76. The DRS counselor sees much maturity in the Student from when she first met them to the Student's senior year. (*Id.* at 398.) She has participated in all the Student's IEPs. (*Id.*) Her services to students are "bonus" services in addition to the transition services the LEA provides through Pathwayswestvirginia.org and the O*NET profiler. (*Id.* at 400.)

77. The DRS counselor works with students regarding social skills and ways to interact in the workplace or higher education setting through a Community Rehabilitation Program, where students go into the community and obtain job skills. (*Id.* at 404.) The Student participated in work skills assessments through NUSkool their junior year, working with a job coach at a restaurant and at an animal shelter. (*Id.* at 404-405; JE 7.)

78. DRS also held the following camps attended by the Student: (a) a self-advocacy camp that reviewed the participants' IEPs, how to understand them, and how to advocate for themselves; (b) a financial literacy camp that taught participants how to manage a bank account, pay bills, read a pay stub, etc., and (c) a VR where students wear Oculus headsets. (*Id.* at 407-408.) Although the Student's headset did not fit, they participated in the program in other ways. (*Id.* at 408.) The Student did not attend the final camp, a career readiness camp, as they did not have their paperwork back in time. (*Id.*)

79. Significantly, DRS provides a NUSkool Scholars program where participants work with a job coach to learn work skills and go to various sites to "tryout" jobs even **after** a student graduates from high school, continuing until they are successfully employed. (*Id.* at 408-409.)

80. After the Student toured the Country Roads Program at West Virginia University, the DRS counselor explored with the Student different potential diplomas, including from Marshall University and Fairmont State University. (*Id.* at 412-413.) She then developed a plan to achieve

a goal in criminal justice with four years of college and six months of job search. The plan was never signed but could still be signed by the Student. (*Id.* at 413-414.)

81. From the perspective of the IEP team, the Student's senior year was all about transition from high school to the next step and the services DRS could provide. In leaving the IEP meeting planning the Student's senior year, the DRS counselor believed everyone was in agreement with that transition plan. (*Id.* at 421.)

82. The DRS counselor completed the FAFSA for the Student and reviewed what they would need to do to apply to Fairmont State University. However, the application process was never completed. (*Id.* at 415.)

83. Based upon her interaction with the Student and other students with autism, the DRS counselor believes the Student would be successful in the AIMSS program at Fairmont State University, including living in the dorm. (*Id.* at 415, 422-423.) She, in fact, not only believes the Student would be successful in a college setting but believes it would be socially detrimental for the Student to return to high school. (*Id.* at 423-424.) With regard to any transportation barrier, DRS provides drivers education training that the Student could access. (*Id.* at 425.)

84. The person who has served as either Principal or Vice Principal of the LEA during the Student's entire high school tenure also testified. As Vice Principal, he was in charge of special education. (*Id.* at 460.) As Principal, he considers himself an advocate for the Student. (*Id.* at 463.) Overall, communications between the Student's Parent and the Principal show the Principal's responsiveness to the Parent's requests, including the Student's participating in chorus and other programs. (*Id.* at 527-530; JE 34.)

85. The Student's parent did not suggest until well into their senior year that the Student stay back and not graduate with their class. Previously, the concerns had focused on problems with

dexterity and math, which they worked to address. (Tr. at 468-472.) The Principal believes, based upon his own observation, that the Student earned their math grade and did not cheat to achieve it. (*Id.* at 466-467.)

86. The Student has come a long way "academically and social/emotionally." (*Id.* at 472.) During his tenure at the school, the Principal's room was a place the Student could come to deal with emotional regulation and social skills. The Student would come to his room to work on issues and was always welcome. (*Id.* at 473.) The Principal saw growth in the Student's emotional regulation during the Student's four years in high school as well as growth in self-advocacy as the Student became more articulate and able to express themselves. (*Id.* at 473-474.)

87. The school wrestling room was used as motivation in the Student's senior year with good results. (*Id.* at 475-476; JE 7.) Personal hygiene kits were provided to assist the Student in brushing their teeth and taking care of restroom and hygiene needs. (Tr. at 476-478; JE 7, at 101-102.)

88. The FBI Academy was a fantastic experience for the Student and encouraged their interest in cybercrime and criminal justice. (*Id.* at 580-581.) The Student attended the Academy without an aide. (*Id.* at 581-582.) The Principal worked with the Student's parent in filling out the application and getting the information needed for the Student to attend the Academy. (*Id.* at 582-583.)

89. The Principal explained the Student's experience with the SAT, a test given to all high school juniors and considered by the state was a major benchmark. (Tr. at 484, JE 11.) The Student first scored 970. (Tr. at 487.) On their second SAT, taken off site, that included an essay portion, the Student scored 1200. (*Id.* at 492.) The Principal went to great lengths to arrange the second SAT testing for the Student which, after two unsuccessful scheduling attempts, took place

on June 1, 2024, with accommodations for the student consistent with their IEP. (*Id.* at 496-497.) The Student's Parent texted the Principal on his cell phone following the test. (*Id.* at 499-500.)

90. The Principal discussed the Student's PEP plan, developed with the guidance counselor working with the Student to link up transitions, goals, and classes to insure the Student was going in the right direction. (*Id.* at 501-02.) The IEP team honors a student's expressed career goals and tries to schedule classes around them—even to the point of a student wanting to be a short stop for the Yankees. (*Id.* at 502.) The team attempts to use the PEP plan information along with the goals and transition in the IEP to ensure they link up and everyone is on the same page. (*Id.*) A PEP plan is prepared before an IEP meeting and is filled out by the Student and the guidance counselor. (*Id.* at 548-49; JE 17.) The PEP shows a behavioral goal of self-sufficiency in communication, a continual process for which the Student has made progress. (Tr. at 551-52.)

91. DRS works with the LEA in the IEP process. DRS is present in the IEP meetings from a student's freshman year. In connection with transition, DRS discusses the opportunities and resources they offer to students, depending on the student's needs. (*Id.* at 507..

92. In the Principal's opinion, the skills needed for the Student to transition from high school were academics, communication, self-advocacy, and organization. Those goals were reflected in the Student's IEPs and PEPs. (*Id.* at 508-509.) He understood the Student wanted to attend college and the IEP goals were intended to assist the Student in that endeavor. (*Id.* at 509-511.)

93. In the IEP year when a student turns 17, the LEA has to inform parents that rights of age majority change when the student turns 18. At the May 16, 2023, IEP meeting, the Student and the Parent were provided with this information. (*Id.* at 512.) The Student's parent never requested additional testing and such testing was never refused. *Id.*

94. At the May 16, 2024, IEP meeting, the Exit Form for the county shows the student being exited from special education because they would be graduating with a regular diploma pending receipt of their final grades. (Tr. p. 516, Ex. 4, Exit Form.)

95. Eligibility meetings were scheduled for May 16 and May 23, 2024, which the Parent cancelled. (*Id.* at 517-518.) A Summary of Performance document was filled out and provided to the Parent. (*Id.* at 518.)

96. The Student completed an Exit Survey stating that they want to pursue "Public defender, law enforcement". The form indicates that the Student is becoming comfortable discussing their needs and asking for help. (*Id.* at 519.) The Parent did not complete the parent survey. The Student's Transcript shows they completed 405 hours of business work-based learning and 105 hours of engineering work-based learning and other classes, including food prep. (*Id.* at 520-523.) The Student's last PEP and Progress Reports show the Student expressing an interest in public defender or corrections and that the Student had completed all of their goals by April 22, 2024. (*Id.* at 522-524; JE 9.) Running lists, made in conjunction with DRS, show the Student's participation in a business symposium during their senior year, for which the Principal showed a video evidencing the Student's growth of which he is "incredibly proud." (Tr. at 526-527, 537-538.)

97. Reviewing documentation, the Principal testified that as the Student progressed through high school, they met the content, standards, and objectives for West Virginia high school students, and the Student is ready for the next step into college with appropriate support. (*Id.* at 536-537.) The LEA has given the Student everything it has to offer and, like the DRS counselor, he believes returning to high school would regress and hurt the Student. While, like many students,

they may be nervous about taking the next step, further high school is not in the Student's best interest. (*Id.* at 538-39.)

98. While some support, such as that provided by their aide at the LEA, is still needed, the Principal believes sufficient support could be provided in a college setting. (*Id.* at 539-542.) Neither the Student' aide nor their assigned teacher would be working with the Student if the Student returned to the high school. (*Id.* at 544.)

99. The Student's Guidance Counselor at the LEA for the Student's entire four years, who has known them since first grade, also testified (*Id.* at 586, 596.) The Counselor was instrumental in preparing the PEP plan, a "fluid" document which guides students through their education. (*Id.* at 587-588.) The "cargo freight agent" came from Pathways of West Virginia and she then prepares documentation and works with the IEP teacher. (*Id.* at 589-590.)

100. The Guidance Counselor worked with the Student setting postsecondary goals on their PEP throughout their high school career and that it was always intended for them to go to college. Nothing in the student's record leads the Counselor to believe that the Student would not be successful in college. (*Id.* at 591.)

101. The Guidance Counselor has seen continued growth, development, and maturity in the Student as well as in their test scores. (*Id.* at 591.) The SAT is the statewide tool in West Virginia for 11th grade assessment and the Student's SAT scores indicate "notable" eligibility for admission to West Virginia schools. Indeed, the Student was recognized as being distinguished in English Language Arts. (*Id.* at 592-593.) Based on her knowledge of the Student, the Counselor believes the Student is ready to take the next step out of high school. (*Id.* at 597.)

102. A former Special Education Teacher with the LEA, who has been the Student's teacher of record ("ToR") since 5th grade, also testified. (*Id.* at 602.) He too believes the Student

is ready for the next step after high school and would be successful whatever the chosen path. (*Id.* at 603.)

103. The ToR has seen changes in the Student's self-advocacy and self-regulation, noting that the Student knows when to seek help or seek a place to calm themselves. He has seen a huge improvement in the Student's maturity. (*Id.* at 604.) He has personally seen the Student operate independently and knows they can do it if support resources are available. (*Id.* at 604-605.)

104. The Student's ToR wrote the Student's IEP, put it in place, and acted as the Student's behavior interventionist. He sometimes attended the Student's classes and set up and ran the various meetings. (*Id.* at 605.)

105. As the years went on, the Student continued to became more assertive, even in math class. (*Id.* at 605-606.) The Parent did not want the Student reevaluated, as agreed upon by all of the team. (*Id.* at 607)

106. The careers set forth in the Student's IEPs were determined by the Student. The Student's ToR would try to guide the Student through different assessments or things to review. (*Id.* at 608.) He is "super proud" of the way the Student handled the business symposium presentatio. (*Id.*)

107. The Student told their ToR they want to go to college at Fairmont State University with the support of the AIMSS program. (*Id.* at 609.) The ToR believes it would not be appropriate for the Student to return to high school as the Student is ready for the next step "maturity wise, emotional, just everything." (*Id.* at 610.) As the Student's ToR, he has provided the Student with the tools necessary to transition to the next step, working with DRS to make sure the Student has the necessary opportunities and resources. (*Id.* at 610-611.) The Student started taking care of their

hygiene needs independently, with the LEA providing items such as toothpaste and toothbrushes. (*Id.* at 628-629.)

108. Working with the Student daily, the ToR would set behavioral goals. He set certain dates to see how the Student was performing those goals and if the Student was not performing, the Student would not get a check. The ToR worked with the BCBA to provide data for the graphs set forth on the Joint Exhibits. (*Id.* at 626-627; JE 2.)

109. The LEA's Special Education Director for the past ten (10) years also testified. (Tr. at 634.) She is a trained IEP facilitator and serves as a mentor for new special education directors. (*Id.* at 635-36.) She has known the Student since preschool. (*Id.* at 641.)

110. With respect to Policy 2419 and transition planning, the direction has always been clear that when a student tells you what they want to do, that is written for their goal. Independent living goals have always been optional and have changed over time. You do not always need an annual transition goal and transition services have never been required. (*Id.* at 636-637.)

111. A new state director has brought more to the table with regard to transition, starting a guidepost to graduation initiative which offers competitive grants for helping students with disabilities reach their graduation goals and post-secondary outcomes. Many exhibits in the case came after that initiative. (*Id.* at 637-639.)

112. The Special Education Director asserts the most important question is whether the LEA is following Policy 2419 and providing all of the transition services, i.e., providing "seamless activities and courses that align the best that we can so that our students leave high school and are successful in their post-secondary life?" (*Id.* at 640.)

113. The Student has always been treated as college prep based upon their abilities so they had to make sure the Student's work explorations fit into academic courses and the LEA has

done a very good job of that. (*Id.*) As an example, the Student expressed interest in being an attorney, and the business symposium is in line with that goal. (*Id.* at 641.)

114. Having observed the Student over the years, the Special Education Director asserts the Student has progressed academically and socially, and the LEA would have been at fault not to graduate the Student. They "earned the right." (*Id.* at 642.)

115. The Special Education Director says the LEA is lucky to have active DRS involvement with special education students. *Id.* DRS began coming to the Student's IEP meetings when the Student was 14. While even without DRS involvement, the LEA would have figured out a way to provide job coaching and job shadowing, DRS made such experiences better because their programs take place in the summer and after school, allowing the Student to take full academic classes during the school year and graduate with a regular diploma, college bound, giving them the best of both worlds. (*Id.* at 644.)

116. With the Student's intellectual abilities, it was not necessary to address independent living skills in the transition plan. (*Id.* at 645-46.)

117. The Student's SAT scores listed careers the Student has an aptitude for, including a doctor. (*Id.* at 649; JE 12, p. 515.) With regard to the section of the SAT dealing with the mechanics of writing, the Student scored at the top of the chart. (*Id.* at 650.) While the Student scored lower in math, they were still above the state average for math for all WV students and well above the state average for all students. (*Id.* at 651.) With respect to emotional abilities, she believes the Student will be successful with support, including from DRS. (*Id.* at 651-652.) She believes graduating the Student is celebrating their success and setting them up for success, not failure as they move on. (*Id.* at 659.)

118. The LEA offers assistance in filling out the FAFSA. While the Student's portion of the FAFSA was filled out, the Parent's portion, which must be completed and submitted, was not. (*Id.* at 660-661.)

119. Even when a student does not go straight to college, there are other steps he or she can take, such as continuing to work with DRS to be employed with a job coach. (*Id.* at 667-68.)

Conclusions of Law

1. A due process complaint must be initiated within two (2) years of the date a parent or district knew or should have known of a disputed decision or alleged action that forms the basis for the complaint. Policy 2419 Ch. 11, § 4.A, at 141.

2. This complaint was filed on May 13, 2024, so the commencement date for disputed decisions or alleged actions forming the basis for the complaint is May 13, 2022. To the extent that findings of fact predating May 13, 2022, are set forth herein, they are provided for the purpose of providing contextual information.

3. The Student, as the party seeking relief, has the burden of proving the allegations set forth in the due process complaint by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *G.M. v. Barnes*, No. 21-1247, __ F.3d __, __ (4th Cir. Sept. 4, 2024); Policy 2419 Ch. 11, § 4.A, at 142.

4. When assessing whether the burden of proof has been met, a hearing officer may not "substitute [their] own notions of sound educational policy for those of local school authorities." *Hartmann ex rel. Hartmann v. Loudoun Cnty. Bd. of Educ.*, 118 F.3d 996, 999 (4th Cir. 1997).

5. The "IDEA requires great deference to the views of the school system rather than [to] those of even the most well-meaning parent." *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 328 (4th Cir. 2004).

6. The LEA is responsible for providing special education and related services to eligible children and is required to honor the substantive and procedural rights of eligible children and their parents under the IDEA and Policy 2419.

7. The IDEA "was enacted to throw open the doors of public education and heed the needs of students with disabilities who had for too long been either completely ignored or improperly serviced by American public schools." *T.B., Jr. by & through T.B., Sr. v. Prince George's Cnty. Bd. of Educ.*, 897 F.3d 566, 571 (4th Cir. 2018) (internal quotation marks omitted). The due process provided must be analyzed through this lens.

8. "The IDEA requires that states, in return for federal funding, guarantee children with physical and intellectual disabilities a 'free appropriate public education' (FAPE). A FAPE refers to 'special education and related services' that '(1) [are] without charge, (2) meet the standards of the state educational agency, (3) include the appropriate level of education in the state involved, and (4) are provided in conformity with an individualized education program (IEP).'" *Bouabid v. Charlotte-Mecklenburg Sch. Bd. of Educ.*, 62 F. 4th 851, 856 (4th Cir. 2023) (internal citations omitted).

9. The FAPE standard was clarified by the U.S. Supreme Court in March 2017 from the *Rowley*[7] standard that a student requiring special education and related services must receive some benefit from their educational services to the *Endrew F.* standard focusing on the student's progress and requiring a school to provide the student with meaningful benefit, although not

[7] *Board of Ed. v. Rowley*, 458 U.S. 176 (1982).

necessarily equivalent to those benefits provided to other students. *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 137 S. Ct. 988 (2017).

10. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex. Rel. Joseph F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. at 998. "A focus on the particular child is at the core of the IDEA." *Id*. Consequently, "the benefits obtainable by children at one end of the spectrum [of disability] will differ dramatically from those obtainable by children at the other end, with infinite variations in between." *Id*.; s*ee also R.F. v. Cecil Cnty. Pub. Sch.*, 919 F.3d 237, 246 (4th Cir. 2019).

11. "Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." *Id*. at 999 (emphasis in original). "This standard is markedly more demanding than the 'merely more than *de minimis* test' .... It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot." *Endrew F.*, 137 S. Ct. at 1000.

12. "[F]or a child fully integrated in the regular classroom, an IEP typically should . . . be 'reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.'" *Endrew F.*, 137 S. Ct. at 992, 999; *see also Board of Education v. Rowley*, 458 U.S. 176, 204 (1982).

13. The duties of the LEA under the IDEA and Policy 2419 generally end when a student graduates from high school with a regular diploma. The IDEA and its implementing regulations provide that "a state is under no obligation to 'make [a] FAPE available' to children with disabilities 'who have graduated from high school with a regular high school diploma.'" 34

C.F.R. § 300.102(a)(3)(i).[8] Policy 2419 similarly provides that the obligation to provide FAPE does not apply to "students who have graduated high school with a regular high school diploma." Policy 2419 Ch. 1, § 3, at 35.

14. As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities. *Forest Grove Sch. Dist. v. Student No.* 3:12-cv-01837-AC, 2014 U.S. Dist. LEXIS 78571, at *76-77 (D. Or. June 9, 2014) (internal citations omitted).

15. For students aged 16 and older, the IDEA requires, with regard to transition planning:

> (aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
>
> (bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and
>
> (cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415(m) of this title.

U.S.C. 1414(d)(1)(A)(VIII).

16. The term transition services, as defined in the Code of Federal Regulations, means:

[A] coordinated set of activities for a child with a disability that –

[8] 34 C.F.R. § 300.102(a)(3)(iv) explains: As used in paragraphs (a)(3)(i) through (iii) of this section, the term *regular high school diploma* means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

> (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
>
> (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes –
> (i) Instruction;
> (ii) Related services;
> (iii) Community experiences;
> (iv) The development of employment and other post-school adult living objectives; and
> (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

34 C.F.R. §300.43.

17. Decisions related to the specific content of postsecondary goals and transition services are the responsibility of the IEP team. The parent and the student are required IEP team members at IEP team meetings where transition services and postsecondary goals are discussed. The IEP team must consider the student's needs, taking into account the student's strengths, preferences and interests. 34 CFR §§ 300.320(b)(2) and 300.43(a)(2).

18. The IEP team is required by to consider "the concerns of the parent for enhancing the education of their child." 34 CFR § 300.324(a)(ii). However, the IEP team is not required to include a particular transition service or services in a student's IEP based solely on a parent's or student's request. *See* JE 43 (USDoE Policy Guidance: A Transition Guide to Post Secondary Education and Employment for Students and Youth with Disabilities, (August 2020), available at https://sites.ed.gov/idea/files/postsecondary-transition- guide-august-2020.pdf).

19. In West Virginia, transition planning for students with disabilities begins at age 14. Policy 2419 Ch. 5, § 1.F, at 79.

20. Policy 2419 defines "transition services" as:

> A coordinated set of activities and supports necessary for a student with a disability to achieve a seamless transition from a school to post-school environment. Transition activities and supports are based on data obtained from age-appropriate transition assessments and focus on improving academic and functional outcomes for the student necessary to achieve the student's post-school goals. IEP teams must consider secondary transition activities and supports related to post- secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living and/or community participation. These activities and supports must be based on the individual student's needs, preferences, and interests. These activities and supports include explicit skill instruction, related services, community experiences, development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and/or a provision of functional vocational evaluation.

Policy 2419 Definitions, at 29-30.

21. Beginning with the first IEP to be in effect when a student is 14 years old (or sooner at the discretion of the IEP Team), the IEP must include:

> 1. appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education and employment, and where appropriate, independent living skills;
> 2. transition services (including courses of study) needed to assist the student in reaching the postsecondary goals identified on the IEP;
> 3. evidence that the goals and transition services are updated annually; and
> 4. pre-employment transition services (Pre-ETS) which may include services provided by schools and/or by the West Virginia Division of Rehabilitation Services that include:
> a. job exploration;
> b. work-based learning;
> c. counseling for transition and post-secondary programs;
> d. workplace readiness training; and
> e. self-advocacy training.

Policy 2419 Ch. 5, § 1.F, at 79.

22. "In addition, and not later than the student's 17th birthday, the IEP must include a statement that the parent and the student have been informed that special education rights will transfer to the student on the student's 18th birthday. Special education rights will automatically transfer from the parent to the student when the student turns 18 years old unless the parent has

obtained legal guardianship. IEP Teams should review alternatives to guardianship, such as supported decision-making, with the parents on an individualized basis when appropriate." *Id.*

23. The U.S. Department of Education has stated that "[e]ach child with a disability must receive FAPE in the least restrictive environment (LRE), and, to the maximum extent appropriate, must be educated with children who do not have disabilities. The LRE requirements apply to transition services, including employment-related transition services, and apply equally to the employment portion of the student's program and placement." *See* JE 43 (USDOE Policy Guidance: A Transition Guide to Post Secondary Education and Employment for Students and Youth with Disabilities (August 2020).

Discussion and Decision

Issue No. 1: Should the Student be substituted for the Parent as Petitioner in this matter?

Yes. The Student turned eighteen (18) years-old during the pendency of this matter, has requested to be substituted for the Parent, and has adopted the allegations in the Due Process Request as their own. In this situation, a Student should not be expected to restart the due process case where, as here, the Student has adopted the allegations in the Complaint and indicates an intention to move forward with the due process hearing. Furthermore, the LEA, which did not object, did not suffer prejudice from moving forward.

Issue No. 2: Did the Student, as part of their FAPE, receive appropriate planning for transition to postsecondary education, training, and employment consistent with the requirements of the IDEA and Policy 2419 in the least restrictive environment?

Yes. The answer to this question is more difficult and requires: (1) an understanding of this Student's abilities, strengths, and weaknesses; (2) an understanding of the application of IDEA and

Policy 2419 law and standards as they relate to certain subjects at the crux of this case[9]; (3) the IEP process; (4) a discussion of assessments administered; (5) a discussion of career transition goals; (6) a discussion of independent living goals; and (7) a discussion of goal quality.

The Student

The Hearing Officer agrees with the statement in Petitioner's Post-Hearing Final Brief (Pet. Br.) that the Student is complicated and complex and excels in some areas while struggling in others. (*Id.* at 1.) The Student has at least six medical diagnoses – autism spectrum disorder, ADHD, sensory integration disorder, anxiety, depression, and encopresis – that significantly affect everyday functioning. (Tr. at 116-17.) These diagnoses are complicated by some physical disabilities and/or limitations, including gross and fine motor deficits. (*Id.* at 118-19) A combination of these diagnoses has impacted the Student's executive functioning, organizational, and social skills and emotional regulation. (Tr. at 84-88; *cf.* 126-31.) The Student's therapist testified that the Student's primary struggle would be in the area of independent living skills, including such things as staying on task, organizational skills, budgeting, making appointments and the like. (Tr. at 78-80.)

Despite these deficits and issues, the Student has generally excelled in English Language Arts. While they have struggled in Mathematics, they have overcome some struggles, at least in part, as evidenced by the most recent composite SAT score of 1200, including a 710 on the reading/English portion of the exam and a 490 on the math portion of the exam. Furthermore, the Hearing Officer found the Student very articulate, if a bit uncomfortable, during their testimony at the hearing. (Tr. at 9-27.) Finally, the Hearing Officer had an opportunity to observe a video of the

[9] The law generally appears in the conclusions of law above. This section focuses on how the law should be applied in certain discrete areas at issue in this case.

Student leading a presentation with peers where the Student was very articulate and seemed to be enjoying themselves.

Based on the testimony elicited, the Hearing Officer can easily imagine the Student succeeding in a higher education classroom. The more difficult question is whether the Student can succeed outside the classroom as well. But, ultimately, the second question is not the one presented by this case, but whether the LEA denied the student a FAPE.

Legal Requirements and Standards

Petitioner begins their legal analysis with an extensive discussion of transitional services being an integral part of a FAPE. Consistent with the conclusions of law set forth above, the Hearing Officer generally concurs with the assertions contained therein. Importantly, and as Petitioner highlights, under the IDEA and Policy 2419 "transitional services" are not just a synonym for future education and career planning. They also can and do include "where appropriate, independent living skills." 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

Of particular relevance to this case is how the DRS's activities should be evaluated in the context of the overall provision of a FAPE. The U.S. Department of Education's Office of Special Education and Rehabilitation Services explains that the provision of transition services is a "shared responsibility" between the school and the vocational rehabilitation agency. (U.S. Dept. of Educ., Office of Special Ed. and Rehab. Services, *A Transition Guide to Postsecondary Education and Employment for Students and Youth with Disabilities*, at 8 (Rev. Aug. 2020)). The Hearing Officer interprets this to mean that, in evaluating whether a FAPE has been provided, the Hearing Officer should consider not just what the school did but also what the DRS did <u>if</u> they are coordinating with one another—clearly the case here.

Also of particular relevance is the provision of assessments. Insightful concerning this issue is *A.P. v. Pasadena Unified Sch. District*, 2021 U.S. Dist. LEXIS 42440 (Cen. Dist. Cal. Jan. 26, 2021), cited by Petitioners, where the district court observed that, while the failure to conduct appropriate assessments is procedural, it rises to the level of a substantive violation if it results in a failure to provide adequate services. *Id.* at *30.

Both parties spend significant time addressing what the Hearing Officer considers to be a fairly straightforward issue: The provision of services to a student post-graduation. As a general rule: "The obligation to make FAPE available to all children with disabilities does not apply with respect to … children with disabilities who have graduated from high school with a regular high school diploma" subject to certain other requirements like notice of change in placement and IEP team approval. 34 C.F.R. § 300.102(a)(3). Petitioner also notes that, while West Virginia is silent concerning many transition planning issues, other states are not, with Ohio specifically including a question about transition planning on its closeout form and Massachusetts providing that "[i]n rare circumstances," transition services may be provided to a student who otherwise has met graduation requirements. (Pet. Br. 16-18.) While the State of West Virginia could provide for supplemental transition services post-completion of general education graduation requirements as a matter of policy,[10] the Hearing Officer finds nothing in West Virginia law or policy making that a requirement absent denial of a FAPE. Accordingly, additional transitional services should only be ordered by a Hearing Officer post-graduation in the absence of a FAPE pre-graduation.

[10] The law does not leave a student with a disability completely without supports. DRS can provide some of those supports to the Student post-graduation, as is occurring here.

IEP Process Engagement

As set forth in the foregoing Findings of Fact, the Student's Parent agreed to initiate services each year and attended most IEP meetings, actively contributing to the planning and decision-making processes. (*See generally* FoF ¶ 60.) The Parent, moreover, was not reticent about raising concerns with or requesting assistance from the LEA.[11] In fact, one of the Parent's biggest concerns was the Student's struggles in mathematics. But there is no evidence that many of the issues being raised in this proceeding were raised in IEP meetings.

Additionally, no evidence was presented suggesting that anyone raised most of the concerns raised in this case about the quality of transition assessments, goals, or services being provided. The LEA first learned that the Parent sought a delay in the Student's expected graduation this past spring and presumably learned of other requests upon receipt of the Due Process Complaint.

Transition Assessments

Petitioner argues that additional transitional assessments should have been conducted and particularly faults the failure to conduct triennial assessments. Pet. Br. at 20-22. The Hearing Officer does not believe Petitioner has established by a preponderance of the evidence that the LEA failed to provide a FAPE in the area of transition assessments.

There is overwhelming evidence in this case that both the LEA and DRS made available and administered interest/career assessments, primarily through the WV Pathways and O*Net websites. There, however, is little evidence that the LEA administered assessments aimed at informing their understanding of some of the Student's other disagnoses and needs.

[11] The Hearing Officer came away from the hearing with great respect for the Parent's advocacy on behalf of the Student.

Could the LEA have conducted more assessments? Certainly. Does the failure to conduct such testing constitute a denial of a FAPE in this case? The Hearing Officer does not believe so. First, the Hearing Officer concludes that members of the IEP Team, informed by the Parent's participation on the Team, understood generally the Student's academic and non-academic transitional needs and did not disregard them in the IEP process, as evidenced, for example, by behavioral goals that, if achieved, would put the Student in a better position to function independently. Second, Petitioner's argument fails because Petitioner has not established a failure to provide adequate services, as explained below.

Career Transition Goals

Petitioner argues that the LEA accepted transition goals that were unrealistic and did not take into account the Student's unique strengths and weaknesses. (Pet. Br. at 22-25.) The Hearing Officer does not believe Petitioner has established by a preponderance of the evidence that the LEA failed to provide a FAPE career transition goal planning and implementation.

Petitioner's Brief discusses contextual evidence about the transition goal of freight and cargo operator listed in two IEPs that were created and implemented outside the applicable statute of limitations. (Pet. Br. at 23.) Accordingly, the Hearing Officer will not address those goals.

The later goals of cosmetologist (May 2022) and military service (May 2023) merit consideration. The Hearing Officer does not believe the Student has the fine motor abilities to perform "cosmetologist" work, even though it might be possible to work in another capacity (e.g., reception) in a place where cosmetologists practice. The Hearing Officer also is skeptical that the Student would qualify for military service, although waivers theoretically may be possible.

How does the LEA explain listing IEP career goals that are likely not achievable? The LEA explains that they list whatever transition goal the Student desires on the IEP (Tr. at 506) but then

"use the child's strengths and interests to work on at least a piece of the goal." (*Id.* at 698-99.) The Hearing Officer is troubled by this approach to listing career goals on an IEP and believes a better approach would be to acknowledge the Student's career goal but to further articulate that the LEA will assist the student in exploring their identified career goal as well as other potential careers related to their strengths and interests, and then to describe in more detail how that will be accomplished as part of the goal-setting process. Having said that, the Hearing Officer believes LEAs should be extremely careful not to dismiss a disabled student's career goals out of hand as impossible. Many students with disabilities have gone on to do things others thought impossible, and this Student could be another such person.

Were simply listing the Student's stated career goal on an IEP all the LEA had done, the Hearing Officer might conclude that there was a failure to provide a FAPE in this case. But that is a small part of the story. The LEA and DRS coordinated to help the Student by placing the Student in a college preparatory program of study, scheduling them to take courses aligned with PEP and graduation requirements, facilitating their completion of over 500 workplace hours in CTE, and making various other opportunities available.

Where is the Student now in terms of career goals? The Student wants to pursue a degree in criminal justice and possibly become a public defender, a career goal the Petitioner describes as both incorporating the Student's interests and preferences and being "realistic and achievable." (Pet. Br. at 25.) The Parent deserves credit for spotting the initial opportunity and ensuring the Student could take advantage of it, leading the Student to discover criminal justice career possibilities. But it is worthy that the Principal supported the Parent's efforts promptly and aggressively. The LEA and DRS also made other opportunities, including career exploration, training, job shadowing, and supported summer employment, available to the Student. In addition,

they provided mathematics tutoring that presumably led to the Student earning an SAT score that many students would envy.

Finally, it should be noted that the Student participated in the WV Country Roads open house on WVU's main campus in Morgantown in fall 2023. School personnel went so far as to ensure the Student's participation by driving to their home on the day of the field trip to obtain the signed permission slip, which had been sent home but not returned. Moreover, when the IEP team determined the Student should take the SAT again their senior year, at the Parent's request, the LEA facilitated the Student's free registration to repeat the SAT in the spring semester of their senior year to raise their math score. After a number of difficulties in scheduling, the LEA even provided the information needed for the Student to log into the College Board test site so they could take the test on June 1, 2024. The Student scored a 1200 total score, scoring 710 in Reading and 490 in Math, placing them in the 94th percentile for Reading and the 44th percentile for Math.

The Student may have traveled a circuitous route to arrive at a "realistic and achievable goal" and that route may include more twists and turns moving forward, but that does not mean the LEA denied the Student a FAPE.

Independent Living Goals

Petitioner argues that the LEA failed to create independent living goals for the Student until one month before graduation. (Pet. Br. at 25-26.) Again, the Hearing Officer does not believe Petitioner has established by a preponderance of the evidence that the LEA failed to provide a FAPE independent living goal planning and implementation in this context.

There is some debate about whether independent living goals are appropriate at all in this context in light of the Student's level of intellectual functioning. (*See* FoF ¶ 116.) The Hearing Officer does not need to reach that issue.

A goal labeled “independent living” (at a dormitory) was not added to the IEP until two-and-a-half months before graduation. However, the Hearing Officer finds many of the things listed by the Student’s counselor as independent living concerns – e.g., executive functioning, organizational, and scheduling skills – were things the LEA consistently worked on with the Student during the two preceding years to improve the chances the Student will be able to function successfully in college and the workplace and live independently.

The Student received extensive behavioral and organizational supports during that time. Behavioral goals were set and monitored as part of the IEP process. Behavior plan data was analyzed by the LEA's Board Certified Behavior Analyst (BCBA), focusing mainly on task behaviors and organizational skills.

As Petitioner points out, the LEA assigned the Student “a one-to-one aide, provided special education transportation, and implemented a behavior improvement plan.” (Pet. Br. at 26.) While providing evidence that the LEA was aware that the Student had independent living issues, the LEA also provides evidence they were addressing some of the most important issues, albeit not using the “independent living” skills label. The LEA’s plans and actions are sufficient for the Hearing Officer to conclude the Student was not denied FAPE.

Goal Quality

Petitioner’s last substantive argument is effectively that the specific transition goals, as written, were too easy and could easily be satisfied by a last-minute research project (or three). (Pet. Br. at 26-28.) The Hearing Officer agrees and may have found a denial of FAPE were it not for the long list of transition-related activities undertaken and completed by the LEA in collaboration with DRS.

Case Law

Case law, while not directly on point, also supports the conclusion that the Student was not denied a FAPE in the receipt of transition services.

In *Bohn v. Cedar Rapids Cmty Sch. Dist.,* No. 15 cv 106 EJM (N.D. Iowa Nov. 18, 2016), the LEA developed IEPs based on a state-generated template. Rejecting a challenge to the transition planning, the district court in *Bohn* found:

> Defendants provided Thomas with adequate transition planning services. In Iowa, IDEA-eligible children must be provided with "transition services" beginning at age 14. 281 Iowa Admin. Code r. 41.320(2). "Transition services" include measurable postsecondary goals, based upon age-appropriate transition assessments related to training, education, and employment, and the courses of study needed to assist the child in reaching those goals. . . . Defendants, and other public schools in Iowa, use a standardized "transition IEP" form to prompt IEP teams to meet the IDEA'S transition requirement. PDF 21, p. 531. "Correctly completing the [transition IEP] form requires the IEP team to address required elements of transition assessments." *Id*. Thomas was provided a transition IEP at all times relevant to the above-captioned action. *Id*. Thomas's IEPs contained the "coordinated set of activities" that were "designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities...." 34 CFR §300.43(a); *see* PDF 21, p. 531.

Id. at 20.

The Court in *Bohn* further stated:

> The IDEA is meant to create opportunities for disabled children, not to guarantee a specific result. *See Rowley*, 458 U.S. at 192. Defendants substantially complied with the procedural requirement to address transition. *See* PDF 21, p. 570. Defendants complied with the procedural requirements of the IDEA. "To satisfy the procedural requirements of the IDEA, a 'school district must follow the procedures set forth in the [statute] to formulate an IEP tailored to meet the disabled child's unique needs.'" *K.E.*, 647 F.3d at 804 (quoting *Renollett*, 440 F.3d at 1011). Defendants followed the IDEA'S procedural requirements in the development of all of the IEPs in question. All IEPs were developed through properly-constituted meetings; Plaintiff was provided notice and an opportunity to attend each meeting, and actually attended each meeting; Plaintiff had the opportunity to share her concerns about Thomas's educational program during each meeting; her comments were incorporated into the IEPs, and her suggestions where appropriate were incorporated as well. PDF 21, p. 572. Plaintiff admits that she had the opportunity

> to attend and participate in meetings, but essentially claims that the team did not address all issues to her satisfaction. Docket no. 35-1, p. 51.

Id. at 23.

In *Renee J. v. Hous. Indep. Sch. Dist.*, 913 F.3d 523 (5th Cir. 2019), the Fifth Circuit also rejected a parent's claim that the student was denied a FAPE because the transition plan was inappropriate. Like the Parent in the present case, the parents in *Renee J.* claimed that the student's disabilities rendered the post-secondary career goals inappropriate. The Court disagreed, finding:

> One of the purposes of the IDEA is "[t]o ensure that all children with disabilities have available to them a free appropriate public education that ... prepare[s] them for further education, employment, and independent living." 34 C.F.R. § 300.1(a). To that end, the IDEA requires schools to provide students with disabilities with meaningful "transition services" to prepare them for adult life to the extent practicable. 34 C.F.R. § 300.43(a). Those transition services must include "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and ... the transition services (including courses of study) needed to assist the child in reaching those goals. " 20 U.S.C. § 1414(d)(1)(A)(i)(VIII) (emphases added). C.J.'s parents argue that HISD's years-long focus on preparing C.J. for a post-secondary career as a police officer deprived him of a FAPE, because "[c]hildren with autism do not grow up to be police officers."
>
> HISD does not dispute that C.J.'s post-secondary transition goal has been focused on law enforcement careers since at least 2013, but the school district explains that his transition plan was nevertheless "specifically designed to assist C.J. to develop the skills he needs to successfully transition to post-secondary life." HISD contends that focusing on a career as a police officer was "clearly appropriate" because it was "C.J.'s primary area of interest." (One of C.J.'s IEP documents, for example, noted that he was "interested in a career in law enforcement, such as a police officer, SWAT team member, or FBI agent.") C.J.'s transition plan included assignments such as "research[ing] 3 sub careers" in law enforcement and "identify[ing] 3 work habits necessary to be successful in the field of law enforcement." The transition plan also called for C.J. to conduct online research to learn about "3 colleges that have degree programs in law enforcement/criminal justice."
>
> But C.J.'s transition plans after he began ninth grade also included additional, more basic transition goals that were not included in his initial transition plan. Among those goals were "work[ing] part time while attending school," attending "a community college or trade school," "independently prepar[ing] for work each day, including dressing, making his bed, making his lunch, and accessing

> transportation," participating "in recreational activities at the local YMCA," "making simple meals," "counting money and making purchases," reading bus schedules, and sorting his clothes and doing laundry.

Id. at 532.

The Court in *Renee J.* found it "reasonable to believe that C.J.'s disabilities render his prospects of becoming a police officer improbable," but noted that "autism is a spectrum and so is the set of skills needed for his daily living as well as various jobs." *Id.* at 533. The Court was mindful of "its obligation not to stray into the field of education policymaking and . . . say, as a matter of law, that HISD was required to communicate a nuanced transition plan in a different way." *Id.* The Court pointed to evidence reflecting that the school had attempted to work with the student's parents in preparing the transition plan and that later transition plans had "attempted to engage his principal future employment interest while developing basic life skills necessary for post-secondary life." On this basis, the Fifth Circuit affirmed the district court's decision that the student's transition plan did not deny him a FAPE.

As the Court in *Bohn* noted, the IDEA was meant to create opportunities for students with a disability and not to guarantee specific results. As further noted in *Renee J.,* autism is a spectrum as are the abilities needed for a particular job. In this case, the LEA provided the Student, on the autism spectrum, with a plethora of educational and career opportunities to point the Student in the direction of their chosen field.

Conclusion

With the exception of the Student's Parent, all witnesses with knowledge of the Student in an educational setting agree that the Student is an appropriate candidate for college. Everyone acknowledges that the Student will need support. But the Student will not be going to college alone thanks to the federal government's foresight in creating a vocational rehabilitation program and

the foresight of institutions like Fairmont State University and Marshall University[12] in creating AIMSS or AIMSS-like programs that increase the odds significantly that the Student will be successful.

In summary, Petitioner did not carry the burden of establishing by a preponderance of the evidence that the provision of the Student's transition services were not reasonably calculated to allow the Student to make appropriate progress in light of their circumstances. Accordingly, the Hearing Officer concludes there was no denial of a FAPE in this case and the duties of the LEA are at an end.

Issue No. 3: If not, what would the appropriate remedy for the denial of a FAPE in this context look like?

The Hearing Officer need not reach this issue because there was no denial of a FAPE in this case.

Appeal Rights

Any party aggrieved by the findings and decisions made in the hearing have the right to bring a civil action with respect to the due process complaint in any state court of competent

[12] The Hearing Officer is an employee of Marshall University but has no direct connection to its program. The Hearing Officer, however, does occasionally receive messages checking on the academic progress of students served by Marshall University's program.

jurisdiction or in a district court of the United States without regard to the amount in controversy within ninety (90) days of the issuance of the Due Process Hearing Officer's written decision.

DATE: 9 October 2024

BEFORE THE WEST VIRGNIA DEPARTMENT OF EDUCATION
OFFICE OF FEDERAL PROGRAMS
DUE PROCESS HEARING OFFICER
DUE PROCESS NO. 24-018

Certificate of Service

The undersigned, [redacted] certifies that service of the foregoing Decision has been made by email, by hand delivery, or by forwarding a true copy thereof in an envelope deposited in the regular course of the United States mail, with postage prepaid, on this the 9th day of October, 2024, addressed as follows:

[redacted]

[redacted]