

STATE OF RHODE ISLAND
PROVIDENCE, SC.

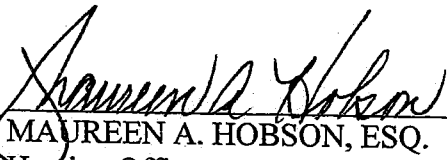
DEPARTMENT OF EDUCATION

IN RE:

K.S VS. WARWICK SCHOOL DISTRICT

LL 15-01

ADMINISTRATIVE DECISION

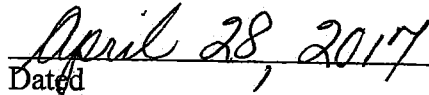


MAUREEN A. HOBSON, ESQ.

Hearing Officer

222 Jefferson Blvd.

Warwick, RI 02888



Dated

HELD: Where the student has challenged that she received a free appropriate public education from March 28, 2014 through March 28, 2015, the student has failed to prove by a preponderance of the evidence that the district failed to provide her with FAPE; further, the student's allegation of retaliatory conduct on the part of the district that resulted in a failure of FAPE is not supported by the evidence on the record. The student's claim of entitlement to compensatory education or other equitable remedy is denied.

LEXICON

Student:

[REDACTED]

Parent:

[REDACTED]

District:

Warwick Schools

Petitioner/Student's Attorney:

Sonja Deyoe, Esq.

District's Attorney:

Jon Anderson, Esq.

Witnesses:

[REDACTED]

Christine Enos, LCSW

[REDACTED]

Heidi Fanion, social worker for district

Mary Leone, case administrator for district

Richard D'Agostino, retired superintendent

Donna Nassa, retired guidance counselor

for district

ISSUES PRESENTED

WHETHER THE DISTRICT FAILED TO PROVIDE THE STUDENT WITH A FREE APPROPRIATE EDUCATION DURING THE PERIOD FROM MARCH 28, 2014 TO MARCH 28, 2015.

WHETHER THE DISTRICT ENGAGED IN A PATTERN OF RETALIATION AGAINST THE STUDENT FOR HER INITIATION OF A COMPLAINT IN THE FEDERAL DISTRICT COURT.

HISTORY AND TRAVEL OF THE CASE

The student is a 23 year old woman with a date of birth of March 28, 1993. The student has been diagnosed with Asperger's Syndrome on the autism scale, attention deficit/hyperactivity disorder, and anxiety that manifests itself in an inability to engage in social interactions. The student has had an individualized education plan (IEP) since at least junior high school. There was a period of time during which the student was receiving her education outside of the district, first at Bradley Hospital, and, following that, the student was enrolled for a time at the Grove School, a residential educational placement in Groton, CT. The student attended the Grove school at public expense. The student returned to the district in 2011 after she was terminated from the Grove School program.

Upon her return to district placement in Warwick, the student did not attend school. She was provided with an IEP that included tutoring and credit retrieval (a computer based education also referred to herein as a virtual program). The student was to have graduated high school in 2011, but she had not completed the educational credits necessary for a diploma, so she continued in the district with tutoring and credit retrieval. The student had IEPs in the district for the years 2011, 2012 and 2013.* On February 14, 2014, approximately one month before the student attained the age of 21, she filed a federal class action lawsuit alleging a denial of FAPE and pressing her entitlement to public education services beyond the date of her 21st birthday, [REDACTED]. As a result of the pendency of the federal lawsuit, it appears that the parties tacitly agreed

4.

The student may have had other earlier IEPs as well, but those are not pertinent to this case.

that “stay put” provisions were in effect, and that the district would continue the student’s educational program beyond her 21st birthday. From [REDACTED] until sometime in the winter of 2015, the district provided educational services. The student alleges that the services provided during that period did not constitute FAPE, and that the district has retaliated against her for the filing of the February 2014 federal court case.

On February 5, 2015, the student filed this due process complaint with RIDE. On that date, the student was approximately 1 ½ months shy of her 22nd birthday. The parties met with this Hearing Officer on April 15, 2015. On that date, the student’s counsel was advocating that the student was entitled to educational services beyond her 22nd birthday pursuant to the provisions of “stay put”. The district had ceased to provide services to the student by that time. There was no testimony taken by this Hearing Officer regarding the due process case since the parties agreed that no testimony was necessary to adjudicate the “stay put” claim. The parties agreed to submit legal memoranda.

On August 24, 2015, this Hearing Officer rendered a decision that the student was not entitled to educational services beyond age 21 and that at age 22, the student had effectively “aged out” of IDEA and the provisions of “stay put” no longer applied to her situation. On or about May 9, 2016, the federal district court for the district of Rhode Island entered an Order dismissing the student’s complaint without prejudice and remanding the case to this Hearing Officer for “the exhaustion of administrative remedies with regard to all counts of the due process petition”. (see Joint 1).

Due process hearings were conducted over 10 days commencing September 19, 2016 and concluding on November 18, 2016. At the request of both parties, post hearing memoranda were submitted for consideration by the Hearing Officer, and the parties waived the 45 day time within which the Hearing Officer was to have rendered a decision .

TESTIMONY AND FACTS

The first witness called to testify was the student herself. She stated that she has been receiving special education services since she was in the 7th or 8th grade. On March 28, 2014, the student attained age 21. At that time, she was receiving special education services from the district through her IEP (P-1-13). That IEP was actually developed in 2013, and the student continued with it pursuant to the 'stay put' provisions of IDEA that were invoked upon the filing of her federal district court complaint. The student had not completed the course work necessary to obtain her high school diploma as of that time.

The student testified that she has an Asperger's diagnosis, anxiety, ADHD and mood disorder. She stated that she has trouble being able, mentally, to leave her house and/or generally in social settings. Her educational course work consisted of tutoring and/or credit retrieval (computer based education). These services were variously provided in the in the Warwick library, school locations and other places, e.g. the student was enrolled at a private gym at public expense as part of her curriculum.

Under the present IEP, Warwick was to provide transportation to and from school services together with the attendance of a social worker to assist the student in accessing her education. The IEP provided that the district would provide transportation to and from the educational services, but the IEP did not specify the type of transportation to be provided to the student. The student testified that she has a phobia about riding busses. Prior to, and after attaining age 21, Warwick had been providing a van, or occasionally a taxi*, to transport her to and from her educational services. Sometimes the student's mother transported her.

Prior to March 28, 2014, the district had assigned Heidi Fanion to serve as the student's social worker. The student was, at that time, living in her own apartment in Warwick.

*Occasionally, in 2013, a taxi was provided by the state Office of Rehabilitation Services. Taxis were not provided by Warwick per testimony of the mother.

Mrs. Fanion would drive to the student's apartment two to three days per week to meet the van there. Mrs. Fanion would then ride the van with the student and accompany her to her tutoring and/or credit retrieval sessions and assist in facilitating her lessons. Thereafter, Mrs. Fanion would ride the van back to the student's residence with her. In addition, prior to arriving at the student's apartment, Mrs. Fanion would generally text the student to advise the student that she and the van were en route to transport her.

In late February 2014, while attending a school meeting to discuss the student, Mrs. Fanion fell and hit her head causing her to sustain a concussion. Thereafter, Mrs. Fanion was on medical leave until June 14, 2014. During Mrs. Fanion's absence, Mrs. Nassa was primarily assigned to those duties involving the student. Mrs. Nassa is not a licensed social worker, but, rather, a school guidance counselor. The student testified that she was not comfortable with Mrs. Nassa because her texts to the student were too lengthy, overwhelming the student and causing her anxiety. In addition, on days when the student said she could not leave her house to attend class due to her anxiety, the student felt that Mrs. Nassa did not encourage her enough to overcome her anxiety, whereas, Mrs. Fanion did that for her.

When Mrs. Fanion returned in June 2014, the student said things were different. She said that Mrs. Fanion was less conversational with her and their interaction was more secretarial. The student testified that, previously, when she had trouble boarding the van, Mrs. Fanion would walk with her and talk with her to calm her down. When Mrs. Fanion returned from medical leave, the student said Mrs. Fanion no longer did that. She said that before the injury, Mrs. Fanion would regularly text her as to the type of van and the name of the driver who would be picking her up each day. She no longer did that, either. The student testified that at some point, she asked for Mrs. Fanion to be removed as her social worker. (P 183, correspondence from mother dated 11/9/14; P 185, correspondence from student).

The student was pregnant from March 2014 until the delivery of her child on November 19, 2014, a fact that she did not disclose to Mrs. Fanion. She testified that she was out of school on medical leave from the last part of November through the first two weeks in December. She attended class for one day in mid-December. She testified that she wanted to resume her classes in January 2015. By that time, the student was again living at home with her mother, where she had gone after delivering the baby.

In January 2015, the mother wrote to Mary Leone (special education administrator) requesting that she direct Mrs. Fanion to cease calling the student.* Mrs. Leone responded (P-64) that neither the van nor Mrs. Fanion would be coming anymore, and that the student would be responsible for her own transportation to and from her educational sessions. The student's mother responded that she wanted a new social worker assigned and continuation of transportation services. The mother complained to school personnel that the student felt that Mrs. Fanion was no longer adequately responding to the student's needs concerning changes in her schedule and her academic setting.

The student testified that her mother did sometimes provide transportation to and from the student's sessions. She said that most times she rode the van. However, at least once the van was unavailable. On that date, the district provided a bus, but the student said she could not access it. She did not attend school that day.

The student's educational program consisted of tutoring and/or credit retrieval. Credit retrieval consisted of remotely accessing class and work from a computer. All of the student's credit retrieval courses were completed by July 2014. However, the student felt that they could have been completed at an earlier date if the district had provided her with free wifi. After June 2014, the student said that she did not participate in credit retrieval

* The student's testimony and that of the mother is that Mrs. Fanion was continually making unwanted telephone calls and/or texts to the student. Other testimony indicates that, unrelated to school, Mrs. Fanion called the student only once on or about January 1, 2015 to wish her happy new year.

courses despite it being in her IEP*

The student also testified that she appeared for tutoring on a couple of dates and found that tutoring had been canceled. And, on at least one occasion, the student was told that tutoring was canceled, but the tutor was there waiting for her.

There was testimony concerning a verbal assault by the student directed at her chemistry teacher. She said the teacher was a “shitty” teacher because she did not provide the student with sufficient help, initially assigning her lessons that were too difficult, then too easy.

The student stated that she had wanted to attend school during the period from January 2015 through the date of her 22nd birthday. [REDACTED] but that she could not do so due to program and transportation issues.

During cross-examination, the student re-iterated that she requires predictability and that unusual circumstances cause her anxiety, e.g. new people driving the van. She did, however, admit that, despite her anxieties, she made several trips on her own via the Amtrak train to visit a friend in New Jersey. She said those trips were difficult for her, but she managed to complete them utilizing the coping skills she had acquired. She also said that she traveled to and from Bradley Hospital via a small bus when she was enrolled there in the 9th grade.

The student testified that she presently has two children. When she was living in her own apartment before her first child was born, she shared the apartment with her boyfriend, the father of her children. The school department’s attorney asked the student whether she sometimes skipped school in order to stay home with her boyfriend, and not because of any issue with her curriculum or transportation.

* The student’s IEP states tutoring or credit retrieval. It does not state that she was to receive both simultaneously, and the evidence is that they were never delivered to her simultaneously in the same subject matter.

School personnel had noticed that the boyfriend's vehicle was parked outside on days that the student said she could not go to school. The student responded that the boyfriend's vehicle was often broken down, and, that even if his automobile was parked outside, he was likely at work. She said that he obtained rides from fellow employees at his workplace.

The student testified that she did not go out of the house and walk around the neighborhood, except to go to the nearby convenience store. She admitted that she lived within walking distance of the Warwick Public Library where her tutoring took place, but that she never walked there. There is testimony that the van ride from the apartment to the library was approximately 3 minutes.

The student testified that she takes medication for her ADHD and that she smokes marijuana. She stated that she was not impaired as a result of using either one.

The district's attorney also inquired about a posting that the student put on the website "Sittercity". In the posting, the student indicates that she is seeking child care employment, that she has four years experience in child care, that she graduated high school from a private boarding school and that she was furthering her education in college. On examination, the student stated that she created the web account for fun and to make money, but she admitted that none of the content was true.

The student also acknowledged that she is on facebook and has "friends" on that site and that she communicates socially on facebook, but she said that she mostly just listens in on others conversations.

The student admitted that the police have been called to her parents' house to break up fights between her and them. The student is the recipient of social security disability benefits, and her father is the representative payee. She denied that she was ever barred from visiting her parents' home and acknowledged that she could have

used the wifi and computer at their house at any time, but she said that when she was there, she was "visiting family"; not going there to do school work. She also admitted that she had access to free wifi at the library.

One of the student's due process complaints is that the school district violated her confidentiality by commenting about her pregnancy on the record of a federal court hearing. In fact, it was the district's counsel who brought up her pregnancy at the court hearing. The student said she believes that Mrs. Fanion was the one who told the attorney that she was pregnant. In August 2014, the date of the hearing, the student was approximately 6 months pregnant. The student said that she felt that Mrs. Fanion had divulged the news of her pregnancy because Fanion wanted to retaliate against her for filing the federal court suit. The student did not provide any evidence that Mrs. Fanion, or any of her other providers, knew about the lawsuit, and she had no evidence that Fanion divulged personal information or retaliated against her, other than her "experiences" with Fanion. She did say that on one occasion while riding the van, she overheard Mrs. Fanion talking to the driver about a serial killer from the past, and that upset her. Her testimony seemed to imply that Mrs. Fanion and the driver were talking about the serial killer in order to purposely upset her in order to retaliate against her. She also testified that on that same day, she believes that Mrs. Fanion did not say "hello" to her when she boarded the van to be brought to her class. She further testified that on another evening, Mrs. Fanion called her phone at about 8:00 pm for school purposes, and that, too, upset her. She stated that she believed that Mrs. Fanion engaged in the foregoing activities in retaliation for the lawsuit.

The student testified that the former Superintendent of Schools, Dr. D'Agostino retaliated against her. Her factual basis in support of this was that he was the superintendent overseeing staff, and, as such, they were his responsibility. She stated that she was not sure if she ever met Dr. D'Agostino.

The student testified that Mrs. Leone retaliated against her after the commencement of the litigation by instructing Warwick staff to communicate through counsel and not with the student or her mother directly. She stated that Leone also created transportation issues. She said there were times when she was ready to go to school, but there was no transportation. She could not recall specific dates or the number of times that she was denied transportation.

The student testified that her due process claim is directed at the issue of whether she received FAPE during the period from [REDACTED] until [REDACTED] when she was no longer eligible for services. Despite knowing that she was ineligible as of [REDACTED], the student nevertheless, on February 2, 2015 wrote to the district requesting the assignment of a new social worker to replace Mrs. Fanion. (P's 67). Mrs. Leone responded that the district had offered supports and services, that the student was not permitted to choose the staff assigned and inquiring whether the student wanted to continue with Mrs. Fanion and transportation that week. Neither the student nor her mother responded to Mrs. Leone.

The next witness called by the petitioner/student was Christine Enos, the student's private social worker/therapist. Ms. Enos is a licensed clinical social worker. She began seeing the student once weekly in approximately March of 2011. The student generally met with Ms. Enos once weekly. However, in May-June 2014 and September-October 2014, Ms. Enos testified that they met twice weekly. She said that the student was under stress due to school and her pregnancy. Generally, Ms. Enos said that her services were directed at providing the student with the emotional support needed to attend school. Ms. Enos has continued to maintain a therapeutic relationship with the student since 2011, with the exception of the period from February 2013-May 2013 when she was on sabbatical from her practice. The thrust of Ms. Enos' interaction with the student is to attempt to provide her with such coping skills as will alleviate her anxiety in social situations. Enos testified that the student's stress at school centered on things changing; courses, teachers, support personnel, etc.

Enos stated that she told Mr. Doyle that the student needed consistency. However she also testified that she did not reach out to any staff in the school district, nor did anyone from the school district contact her. Enos said that she did not alert school personnel to the student's increased stress during the period from May 2014 through March 2015. Enos stated that she was trying to remain separate from the school setting even though other medical providers' reports had suggested she communicate with school personnel, and she was privy to those reports.*

The student's mother testified at length. She stated that she had a power of attorney for her daughter that gave her the ability to advocate on the student's behalf, even though the student had attained age 18. The mother testified that the student has had an IEP since she was in the 8th grade in Warwick. The student attended school at Bradley Hospital for a time. Then, she was enrolled at public expense at the Grove School in CT. She was at the Grove School from January 2010 until February 2011 when she was asked to leave the program. There was an incident wherein the student caused damage to the headmaster's office, so the school terminated her enrollment there. The mother testified that Grove School personnel "felt she needed a higher level of care". At that point, Warwick offered several residential placements, all of which were refused, so the student returned to the Warwick school system with approximately 5-6 months of education needed for graduation. At Warwick, the mother participated in all but one IEP meeting. The mother testified that following the student's 21st birthday, the student remained in the school system with an IEP pursuant to the "stay put" provisions of IDEA. The mother stated that prior to the student attaining age 21, there had been monthly meetings with school personnel. These meetings were, for the most part, initiated by the mother in order to discuss the student's progress. The mother stated that after March 2014, the monthly meetings were discontinued by the school district. The 2013 IEP (P-1-13) did not require

* There was testimony that the mother signed a release authorizing only Mr. Doyle and Ms. Ahlijanian to talk to Ms. Enos. They were only minimally involved in the student's program. According to Mrs. Leone's testimony, Mr. Doyle did have some contact with Ms. Enos, but at some point in May 2014, she stopped responding to his inquiries.

monthly reports or meetings, and it would appear that the district merely acquiesced in conducting the meetings at the request of the mother in 2013, but that they ceased doing so when "stay put" was invoked in 2014. The 2013 IEP, and consequently, the "stay put" IEP require quarterly reports. On cross-examination, the mother did admit to receiving quarterly reports that, among other things, let her know that the student had completed her physical education, english and health requirements to graduate, where the student stood with respect to math, and what was being done about chemistry.

The mother testified that from March 2013 until February 2014, Mrs. Fanion was the person with whom she spoke about what services were being provided to the student, e.g. testing the student, previewing her schedule, walking with her, etc. While Mrs. Fanion was out on medical leave, the district tried a couple of people* and ultimately assigned a former guidance counselor, Mrs. Nassa as the student's interim support person. On cross-examination, the mother acknowledged that she and Mrs. Leone had spoken about the assignment of the guidance counselor to assist the student, and they had both agreed that Mrs. Nassa was an acceptable fill-in for Mrs. Fanion.

Mrs. Nassa was assigned to help the student from approximately March through mid June and again for a few days in August. The mother testified that in May of 2014 she requested a meeting with district personnel to address problems with Mrs. Nassa. The mother said that the student had complained that on one occasion, Mrs. Nassa told her there would be a change in the regular bus driver, but that she did not tell her that the van was being exchanged for a short bus on that date. The mother stated that Mrs. Nassa was not as helpful as Mrs. Fanion in coaxing the student out of the house, so often times, the mother would have to provide the transportation. The mother testified that prior to her leave, Mrs. Fanion would go into the apartment lobby to

* Later testimony by Mrs. Leone establishes that by union protocol, people were asked to fill in for Mrs. Fanion, but no one bid to fill the position, so the district resorted to non-union personnel.

retrieve the student, whereas Mrs. Nassa did not do that for her. Subsequently, on cross-examination, the mother did admit that she had never witnessed Mrs. Fanion going into the lobby, but that's what she was told by her daughter.

The mother testified about an incident that her daughter said happened on August 25, 2014. That day, school personnel told the student that the van was not available and that they were sending a bus. The student was upset. Mrs. Fanion, upon hearing that, worked hard to obtain the van, and she and the van went to the student's apartment to transport her to her class. However, despite the arrival of the van, the mother said the student was too distraught to come out of the apartment, so Mrs. Fanion and the van left. The mother drove the student to her tutoring that day, but the student could not make herself go into the library building, so her session was canceled.

The mother testified that following Mrs. Fanion's return from medical leave in June 2014, the mother was no longer permitted to contact Mrs. Fanion directly, but she was advised that communication should go through Mrs. Fanion's supervisor, Mrs. Leone.

During the course of the mother's testimony, the student's attorney presented copies of several letters and e mails dating from November 2014 to February 2015 that were entered into the record of hearing. Those correspondences centered on transportation issues and a request that Mrs. Fanion be removed as the student's social worker. The district's attorney produced a series of e mails establishing that the van had gone to the student's residence on at least 3 occasions in December 2014 and January 2015, and that the student had refused the transportation. Following one of those occasions, on January 7, 2015, school personnel advised the mother and the student that the van would not be dispatched to provide transportation anymore, and that the tutors would meet the student at the library. The mother maintained that the student refused to

work with the social worker, but still wanted transportation, that it was the student's right to refuse the social worker, and that the district was required to send the van.*

The mother further testified that the district was to provide educational services through credit retrieval and tutoring, but that following July 2014, the student received tutoring only. The student was experiencing trouble with her chemistry class, and she wanted a tutor in addition to credit retrieval in that subject. The mother did admit that the IEP calls for tutoring or credit retrieval, and that the district never did provide both those things simultaneously for the same subject, even prior to the filing of the federal court lawsuit.

The mother testified that the student took a leave of absence from school to give birth and attend to her baby in the latter portion of November and early portion of December. By then, the student was again living at home with her mother and family. She said that the student got ready for school and attempted to leave the house to access her educational services on December 16, 2014 and several times in January 2015, but that she was not successful. The student did not attend school thereafter. The mother admitted that the district continued to offer services, i.e. a social worker, transportation and tutoring through March 2015. The student refused the services.

On cross-examination, the mother testified that she felt the student was retaliated against by district personnel, Mrs. Leone, Mrs. Fanion, Mrs. Nassa, Dr. D'Agostino, and by "others who provided services", but who she could not name. The mother stated that school personnel treated the student "differently" after March 28, 2014, the date of initiation of her "stay put" IEP. By way of example, the mother said she was directed to disengage speaking directly with the student's providers and to, instead

* The IEP (P1-13) provides that the district will provide transportation without specifying the type of vehicle.

address her questions and comments through legal counsel and Mrs. Leone*. The student herself was permitted to interact directly with all of her providers at all times with respect to anything pertinent to the student's educational services.

The mother testified that the student was not present at an August 6, 2014 federal court hearing during which the student's pregnancy was discussed. The mother told the student about it. The mother did not think that her daughter would be so upset about it. The student was not identified by name on the record of the court proceeding that was entered as an exhibit in this hearing.

The mother further testified that Mrs. Leone "retaliated" against the student by refusing to meet with her and the mother about the student's inability to access the credit retrieval program. She also wanted the district to provide her with a computer so she would not have to pay for wifi service.**

In direct testimony the mother also intimated that the student's gym membership was not renewed by Warwick as another element of intimidation. However, on cross-examination, the mother admitted that the gym membership was not renewed in 2014 because by the renewal date, the student had already completed the physical education requirements necessary for graduation, and she acknowledged that the gym membership was not contained in the student's IEP in any event.

The mother stated that Mrs. Leone had further retaliated against the student by refusing to replace Mrs. Fanion with another social worker. The mother felt it was

*The mother claims to have told school personnel that their legal representation was limited in nature, but she stated that she was not sure whether the district's counsel was ever made aware of that fact. Mrs. Leone testified that she was never made aware of it.

**There is testimony that the student had been able to "tap into" the wifi service of a neighbor or an adjacent property at her apartment, but the wifi was shut off or the person moved. Thereafter, the student was only able to access wifi at the library where her sessions were held, or at her parents' home.

the district's responsibility to obtain the services of another social worker if she and the student did not want Mrs. Fanion.

Also, the mother alleges that the district failed to conduct IEP team meetings when requested to do so. Though not required, the mother did admit that the district conducted one IEP meeting in March and two more in May of 2014. She says that even though those IEP meetings were held, nothing ever came out of them under the guise of "stay put".

The mother also testified that she initiated an access to open records request regarding Mrs. Leone's employment and pension records and those of others who had been recalled to work after their retirement. She stated that she did this solely to expose the hiring practices and budgetary decisions of the Warwick School Department. Once received, the mother provided the records to the school committee, city council, her state representatives, the Speaker of the House of Representatives in RI and to an investigative reporter, Jim Taricani, who interviewed Mrs. Leone as a result of seeing the records.* Despite the opening of her personnel records, the mother testified that Mrs. Leone did not take any retaliatory or other negative action against her or the student and continued providing services to the student as she had in the past.

The next witness called by the petitioner/student was Heidi Fanion, the social worker for the district who was assigned to help the student. Mrs. Fanion possesses degrees in elementary education, special education and social work. She is a licensed social worker. Mrs. Fanion has been working as a social worker in the Warwick School Department for approximately fifteen years. She began servicing the student on or about June 2013. Mrs. Fanion replaced a school based social worker at Tollgate High School who had previously been assisting the student. The student's services and

* Mrs. Leone later testified that she was aware that her records had been disclosed to the investigative reporter, but she was not aware that they were made public to governmental bodies until the mother testified at this hearing.

schedule dictated that she be assigned a social worker whose schedule was flexible as was necessary to accommodate the student. The student's schedule was primarily two days per week during the midday hours. Mrs. Fanion testified that her responsibilities to the student were to assist her in accessing her educational services, including, assisting her in transport to and from her services by riding in the van with her, accompanying and staying with her during her educational sessions, and answering questions and communicating with the student in order to "preview" her day and help her attend her scheduled "classes" toward graduation. It was Mrs. Fanion's further responsibility to keep daily progress reports. The progress reports were submitted weekly to Mrs. Fanion's supervisor, Mrs. Leone, and copies were forwarded to the mother. Mrs. Fanion stated that she established a therapeutic relationship of communication and trust with the student, but that she was not providing therapeutic services. Mrs. Fanion was aware that the student had her own therapist outside of school, Ms. Enos, who was providing therapeutic services.

Mrs. Fanion testified that in general, her duties included communicating with the student via text to inform her of the day's schedule and activities, meeting the van at the student's residence and riding to and from class with her and accompanying her throughout her tutorial and credit retrieval sessions. Each day, Mrs. Fanion would text the student in advance to tell her which subject was scheduled and what time she would be picked up at her home. Sometimes, prior to the arrival of the van, the student would text back that she was not coming that day. Other times, the van and Mrs. Fanion would arrive, and the student would refuse to come outside, despite coaxing by Mrs. Fanion.

In February 2014, while she was attending a meeting about the student in Warwick, Mrs. Fanion fell on ice and sustained a concussion. Thereafter, she was out of work until June 2014. Upon returning to work, Mrs. Fanion was told by the mother that the student was having a more difficult time leaving her apartment in order to access her education. Both prior and subsequent to her medical leave, Mrs. Fanion testified that

her interaction with the mother was limited to issues regarding the student's transportation. They did not discuss the student's emotional or educational needs. In addition, Mrs. Fanion stated that when she returned from leave in June 2014, she was instructed by Mrs. Leone not to respond to academic inquiries, but rather, to provide the student with the support and assistance necessary for her to get that information directly from her tutors. Irrespective of the June directive from Mrs. Leone, Mrs. Fanion testified that had always been her process. She stated that she is not an educator, nor was she involved in the student's academics, except to help the student access them. She said that her role did not change from her first interaction with the student to her last one.

The student's mother testified that before Mrs. Fanion's medical leave, she used to meet the student at her apartment door or in the apartment lobby, but that upon her return from leave, Mrs. Fanion no longer went to the door or the lobby. However, Mrs. Fanion stated explicitly that she never went to the student's door or into the lobby, that she texted the student when she and the van were outside, and that she waited there with the driver.*

Mrs. Fanion testified that she did not change her services or interactions with the student in any way. She further said that she did not realize there was any issue between them until she learned that the student and her mother were trying to have her removed as the student's social worker. Once, on September 17, 2014, the mother came unannounced to the student's tutoring session and sat at a nearby table staring at them throughout, something she had never done before. Mrs. Fanion said that the mother's presence made the lesson uncomfortable.

On or about November 9, 2014, the parents and student wrote a letter to the

* Mrs. Fanion's protocol was to drive her own vehicle to the student's apartment, leave it there, meet the van driver outside, wait for the student to come out, and to accompany the student to and from class on the van.

Superintendent of Schools seeking Mrs. Fanion's removal as the assigned social worker. (P-183) The letter indicated that, in their opinion, Mrs. Fanion was not providing the level of support that she had previously. Mrs. Fanion said she was upset by the content of the letter and confused as well. She thought that she had a good relationship with the student and that she had done nothing differently from her past services to the student. She stated that, after discussing the letter with Mrs. Leone, they agreed she would continue in her role as the student's social worker. From that date, she continued providing services to the student through December 16, 2014. In January 2015, Mrs. Leone instructed her to discontinue her services to the student.

The next witness called by the petitioner/student was Mary Leone, a Warwick school administrator who had formally retired from service in 2010. Following her retirement, Mrs. Leone was asked to come back to work on a per diem contract basis in order to assist with the student and facilitate her graduation from high school. Mrs. Leone was familiar with the student as she had worked with her previously when she was in the 9th grade. Other staff members who were knowledgeable about the student had left the high school, and the district was looking for someone with ties to the student who could help her get through the educational process toward graduation. Mrs. Leone was asked to stay on through the student's graduation. Mrs. Leone's history with the student had included overseeing and managing her education within the Warwick school program as well as overseeing her out of district placements, i.e. Bradley Hospital and the Grove School in Madison, Ct. Mrs. Leone was originally only contracted for one year post retirement. However, following that year, she was asked to stay in order to provide continuity for the student since the student had not graduated. Mrs. Leone testified that there had been changes within the Warwick school administration, and she was the only one in administration who was familiar with the student. Mrs. Leone said she was aware that the student's parents had filed legal complaints with the Connecticut Department of Education, the Connecticut governmental unit that is the equivalent of Rhode Island DCYF, and the Rhode Island Department of Education sometime in about

July 2012. Mrs. Leone recalled that the Connecticut complaints “had something to do with the Grove School releasing (the student) from their program”. She said that the cases in Connecticut were ultimately resolved, but she is not familiar with the details. She also stated that the RI complaint was resolved. The resolutions took place before the student turned 21.

Mrs. Leone was asked to stay on in the 2013-2014 school year, again to maintain continuity in the student’s educational program. As of [REDACTED] the student had attained age 21, but she still had not graduated, so educational services remained intact, and Mrs. Leone continued overseeing the program.

Mrs. Leone testified that she attended an IEP meeting in March 2014. That meeting had been preceded by meetings that took place on December 3, 2013 and January 28, 2014. One of the goals and objectives contained in the “independent living” section of the IEP was that the student was to work on calling for and riding in a taxi. The IEP notes that fostering the use of a taxi would be initiated by the state Office of Rehabilitative services (ORS). It was not the responsibility of the Warwick School Department, and ORS was to meet privately with the student to achieve that goal. The IEP also listed school subjects that were to be completed within the timeframe of the IEP in order to secure sufficient credits to graduate. The IEP specifically notes science, physical education, english, two math courses, health and one computer credit. Mrs. Leone testified that the student needed to complete her portfolio and a modified senior project. Regarding the subject matter content, Mrs. Leone testified that the IEP provided for instruction by way of tutoring and credit retrieval (also designated as virtual learning). The witness explained that grading in subject matter content areas was provided by computer generated tests for the credit retrieval subjects and by the teachers for tutor taught courses. In addition, there were teacher and staff comments made that came under the general heading of “progress reports”, some of which may have been given verbally at meetings and some of which were written down, e.g. the attendance records. The witness also testified that credit retrieval sessions and tutoring

were set for specific days of the weeks and times of day in order for the student “to make progress in developing and understanding routines, schedules, rules and expectations for tutoring”. In addition to subject matter content, the IEP was trying to address the student’s failure to keep her credit retrieval and tutoring appointments. The credit retrieval program was also trying to instill in the student the desire and ability to work independently. The student’s school program from March 7, 2014 through July 20, 2014 consisted of two-three days per week for 1-1 ½ hours each. She also received some tutoring in August that year.* There was a computer available to her at the library where her educational services were delivered. The school department arranged for the use of the library and the van transportation in part to address the student’s tablet and wifi issues. The student completed her credit retrieval courses as of June/July, and she embarked on the tutored portion of her curriculum in August 2014. Mrs. Leone testified that the student did not receive both tutoring and credit retrieval in any subject. She accessed each subject by one method or the other, but not by both.**.

Mrs. Leone testified that Warwick provided transportation services “on some days”. She said that there were days that the mother transported the student, e.g. the mother transported her to the gym to meet the physical education teacher. Warwick would have provided that transportation, too, but the student chose to go with her mother. Sometimes, the mother brought her to classes also. These were their choices. Transportation by the school district was available.

Mrs. Leone testified that the student’s file was available to staff. They were all made aware of the student’s social, emotional and educational issues. Further, there was discussion among staff who had worked with the student in the past and incoming staff to initiate them to the student’s issues. Mrs. Leone said that when choosing the

*The student did not qualify for extended school year services, but Warwick continued her in a summer school program to facilitate and expedite her graduation.

** The student’s position is that the IEP required tutoring and credit retrieval in the same subject matter. The IEP in evidence clearly states, “tutoring and or virtual learning”. It does not mandate both.

student's tutors, she reached out to certified content teachers who were familiar with the student first, then others. She contacted each of them, one at a time, inquiring as to their availability given the student's part time, later afternoon schedule. Mrs. Leone said that she did not discuss course content with any of the tutors, as she is not subject certified. Specifically, she did not address the chemistry course content with Mrs. Clark, the 12th grade chemistry teacher who was assigned to tutor the student.

Mrs. Leone testified that a social worker was assigned to help the student access her education by providing emotional support. When Mrs. Fanion got injured, Mrs. Leone did not expect her to be out of work from February until June. She thought that it was a month to month thing, though she didn't have an exact date for Mrs. Fanion's return. Mrs. Leone contacted all of the school department's social workers to see if any of them were available to fill in for Mrs. Fanion. No one bid the position, so Mrs. Leone contacted Mrs. Nassa, a retired guidance counselor from the district to see if she might be available. Mrs. Nassa agreed to work with the student until Mrs. Fanion returned, and the Superintendent approved her hire. In addition to being a certified guidance counselor, Mrs. Nassa is also a certified special educator.

In response to an inquiry by petitioner's counsel, Mrs. Leone did testify that following the filing of the federal court complaint and the initiation of stay put" in February 2014, she instructed her staff to correspond with the mother through her office rather than directly. Mrs. Leone stated that complaints about the district's handling of the IEP were being funneled through the district's attorney for discussion with the petitioner's attorney. She said those instructions did not include interactions between the student and her service providers. They continued to communicate and engage with the student in the same manner as they had done previously. Mrs. Leone was instructed to bring the mother's complaints about the IEP directly to the attention of the district's counsel.

Mrs. Leone testified that the services being provided by Mrs. Fanion to the student did not change in any meaningful way from the date she began providing assistance to her

through December 2014, when her services terminated. Mrs. Fanion drove her car to the student's residence, waited for her to come outside, boarded and rode the van with her to her educational setting, stayed with her throughout her lesson to help and encourage her in accessing her educational program, and then rode the van with the student back to the student's residence. Mrs. Leone testified that Mrs. Nassa provided those same services while Mrs. Fanion was out on medical leave.* She stated that Mrs. Nassa was told to read the student's file, and she was also briefed on the student's situation by Mr. Doyle.

Mrs. Leone testified that there was an IEP meeting on May 9, 2014 wherein the parent discussed the fact that the district had sent a bus with Mrs. Nassa one day rather than the van. The mother said the fact that the bus was dispatched rather than the van upset the student. Mrs. Leone explained that on that particular day, the van delivered the student to her class, but while the student was in class, the van driver hit her head and was therefore not available to drive the student home. Mrs. Nassa called the school department and obtained the services of a bus. That upset the student.**

Mrs. Leone further testified that the mother would often contact her complaining about things that happened between the student and Mrs. Fanion. However, the mother's descriptions of events and interactions differed substantially from the reports that Mrs. Fanion regularly provided to the school department. Mrs. Leone knew that the mother was not present for any of these interactions, so she surmised that the student was providing her mother with her interpretation of things that had happened. Mrs. Leone said she spoke with Mrs. Fanion about the issue and she instructed Mrs. Fanion to continue filing her reports containing the facts as she saw them. She said that Mrs. Fanion was quite upset hearing about the mother's allegations. She felt that the mother

* There is testimony that Mr. Doyle and Ms. Ahlijanian attempted to fill in for Mrs. Fanion for a short period of time. When it became evident that Mrs. Fanion was not returning immediately, Mrs. Leone had to locate a more permanent substitute (Nassa).

** The IEP dictates that the school department will provide transportation. It does not specify the mode of transportation.

was dissecting her emails to the student, questioning the format of her texts, and even criticizing her sentence structure. Mrs. Fanion told Mrs. Leone that she felt very uncomfortable on the day that the mother appeared at the student's lesson and sat at an adjoining table staring at her throughout the session. Mrs. Fanion did not understand the purpose of that interaction. Mrs. Leone instructed her to continue as she had with the student, including her documentation.

Mrs. Leone testified about a letter she received that was dated November 9, 2014 and was signed by the student and both of her parents. (P-183) Mrs. Leone thought that Mrs. Fanion was being "unfairly scrutinized" by the mother in as much as Mrs. Fanion reported to her that she and the student were getting along fine. Despite the student/parents' request that she replace Mrs. Fanion, Mrs. Leone did not do so. She said her decision was partly based on the fact that the student took a medical leave from school to deliver her baby shortly after that date. The baby was born on November 19th. Mrs. Leone advised the mother that she was not removing Mrs. Fanion as the social worker on November 17th. The student came back to school for one session on December 16, 2014, and Mrs. Fanion was there to assist her on that date. Mrs. Leone said changing social workers in mid November didn't make any sense since the student was going out on medical leave, and her attendance, to that point, had been sporadic.

On January 7, 2015 Mrs. Leone sent an e mail to the mother informing her that the van would no longer be available to the transport student. She explained that just prior to that date, the van had appeared at the student's residence on at least 3 occasions, and the student had not gone to school, so the van was sent away. The student and her mother refused to accept Mrs. Fanion as the support person, and without the support person, the student would not get in the van. Mrs. Leone told the parent that Mrs. Fanion would still be available, that the district would provide bus transportation, and that the tutors would continue to meet the student at the library. Mrs. Leone further explained that her contact was limited to e mails and conversations with the mother. She did not contact the student directly because she was instructed by the mother that all correspondence

was to go through her. On January 7, 2015, and on other occasions following that date, Mrs. Leone made the mother aware that the student's tutors would be waiting for the student as usual in the Warwick Public Library. Subsequently, Mrs. Leone notified the mother that the tutors had been sitting at the library for several weeks and that the student had not attended any sessions. Mrs. Leone also testified that she continued to offer bus transportation if the student wanted to utilize it.

There was also considerable testimony about the student's 4th year chemistry class. Mrs. Leone testified that the student began the chemistry class sometime in the early part of 2014 as part of her credit retrieval learning program. However, the subject became too difficult for the student to access using credit retrieval. At that point, the district adjusted the student's curriculum to concentrate on her english, health and physical education requirements. Once those were successfully completed, the district re-engaged the student in chemistry sometime in August 2014 with the assistance of a tutor, rather than through credit retrieval. At the outset of the chemistry tutoring, there was testimony from several witnesses that the student and the chemistry teacher initially had some trouble getting along. The student engaged in verbally insulting the teacher as the teacher was trying to work with her in order to determine her level of understanding about the subject matter. The testimony only related to one incident. Thereafter, the student continued in chemistry and did not request any change in the chemistry teacher.

Regarding completion of the student's physical education requirement, the district paid for the student's membership in a private gym so she could complete the credits on her own time and at her own pace. Eventually, it became apparent that the student was not completing her physical education requirements at the gym, so the district (Mr. Doyle) adjusted the physical education curriculum so that the student could complete it through written work and through his intervention in designing a special curriculum that she could access at the Tollgate High School track. Subsequently, the gym membership expired.

Mrs. Leone testified as to a portfolio and senior project that the student was required to complete in order to graduate. The district appointed Fred Schweizer as her point person to assist her in fulfilling those requirements. The student did not complete her senior project because she did not keep any of her scheduled appointments with Mr. Schweizer.

Regarding summer school in August 2014, Mrs. Leone testified that the district does not typically provide any educational services in August. However, the district did offer to provide this student with chemistry tutoring in August 2014 in order to maintain continuity. Summer school does not usually extend into August.

Mrs. Leone testified that the student's "school" attendance was sporadic. School records indicate that from March 28, 2014 until March 28, 2015, the student attended 34 sessions, was absent for 74 sessions and 21 sessions were canceled.* Mrs. Leone felt that if the student had attended even half of the sessions that she missed, she likely would have graduated already.

Under examination by the district's counsel, Mrs. Leone elaborated on her earlier testimony and provided further details about her post retirement employment in Warwick. She stated that she had been recalled by the district in 2010 to assist with the subject student and several others. She stated that she has had considerable work experience with highly functioning autistic students. She also said that in 2013, she attempted to negotiate a cab contract for the student to be brought back and forth to school. However, she was unsuccessful in doing so because no cab company would agree to provide the service due to the brevity of the ride (the student's apartment was only 8/10ths of a mile from the library) and the infrequency of use. The district then purchased service with the van through the West Bay Collaborative.

*The record is not clear as to whether the student skipped 71 or 74 sessions.

Mrs. Leone testified that at a meeting on March 19, 2015, just before the student's 22nd birthday and exit from the school system, the student was provided with a "Student Summary of Performance", i.e. a packet of material including the student's transcripts and latest evaluations for her use in planning her future.

Mrs. Leone testified that as far as she was aware, no one took any retaliatory action against the student at any time.

The former Superintendent of Schools, Dr. Richard D'Agostino testified that in his position as Superintendent, he did not have any direct contact with the student. He gained some familiarity with her when he served in his previous position as Director of Special Services from 2007 through 2012. Dr. D'Agostino had no input into the special education services that the student received from March 2013 through March 2015. He was, however, responsible for arranging to have Mrs. Leone serve as the student's special education administrator. He said that there were several people in the department who were retiring, and he felt it was in the best interest of stability for the student that he retain Mrs. Leone in the district to serve as the special education administrator for the student, as Leone was familiar with the student, her IEP and the family. Mrs. Leone had previously been the student's case manager. Dr. D'Agostino said that he did not have any input in the selection of Dr. Pistachio, an independent evaluator hired in 2012. He also said he was not specifically aware of the student's transportation requirements, her IEP, or the personnel who were assigned to deliver her education, except in a very general way. Dr. D'Agostino testified that he was aware of the federal court complaint that was filed by the student seeking to extend her eligibility for educational services beyond age 21 to age 22. Dr. D'Agostino stated that he did not retaliate in any way against the student for the filing of her complaint, nor did he instruct anyone else to do so. As far as he knows, no one in the Warwick School Department retaliated in any way against the student.

Donna Nassa, the guidance counselor who served as the student's emotional assistant from March 2014 until June 2014 was called to testify. Mrs. Nassa said that she is not a clinical social worker. She said she provided the following services to the student: coordinated timing for the student and acted as her educational coach, kept her thinking positively and communicated for her if she were under any stress or anxiety. She accompanied the student on the van and at her classes. Prior to embarking on this assignment, she read the student's IEP and spoke with Mr. Doyle and Ms. Ahlijanian. She used all of them as resources for finding the student's needs, baseline strengths and weaknesses. Mrs. Nassa also accompanied Ms. Ahlijanian once or twice in advance of starting alone with the student.

Mrs. Nassa testified that she and the student traveled to classes via a van that was provided by West Bay Collaborative, unless the student chose to ride with her mother. Mrs. Nassa said there was never a time when she traveled with the student that they did not use the van. Mrs. Nassa did recall one incident when the student came with her to class but then went home with her mother. On that date, Mrs. Nassa was left without a ride. She called the Warwick School Department and a bus came to bring her back to her vehicle that had been left at the student's apartment. Mrs. Nassa was shown an e mail that the mother wrote to Mrs. Leone. (P-54). The e mail indicates that the student had to ride the bus on that date rather than the van. Mrs. Nassa was not copied on the e mail, although a number of other people were copied. Mrs. Nassa emphatically denied that the event occurred, and she wondered why she had not been copied on the e mail. Mrs. Nassa further stated that throughout her 33 years of school employment, she had provided these same types of support services, with the exception of transportation, to other students.

FINDINGS AND CONCLUSIONS

The petitioner herein alleges that the Warwick School Department failed to provide her with a free appropriate public education (FAPE) during the period from March 28, 2014 to March 28, 2015. The petitioner's allegations in support of her claim are that the district failed to conduct required IEP meetings, failed to provide her with support services, specifically the interaction with a social worker when Mrs. Fanion was out on medical leave, and failed to replace Mrs. Fanion when requested to do so in November 2014. Also, the district denied the services of a transport "van" instead of a bus, and failed to provide her with tutoring and credit retrieval sessions simultaneously. Where the petitioner alleges a denial of FAPE, she bears the burden of proof by a preponderance of the evidence. Schaffer v. Weast 546 US 49 (2005). However, it is the burden of the educational agency to demonstrate at hearing that the IEP is adequate. Lt.T.B. ex rel v. Warwick Sch Comm. 361 F3d. 80 (1st Cir. 2000). In the instant case, it appears to this Hearing Officer that the district strove mightily to educate the petitioner in a manner designed to provide her with FAPE in the least restrictive environment. The record establishes that the student attended school at Bradley Hospital (a medical facility) for a time after which she transferred to the Grove School, a private educational facility in the State of Connecticut. Warwick bore the cost of the student's education at Grove, and, presumably, would have continued to do so had the student not been asked to leave that facility. Thereafter, the record reflects that the district offered several other out of district placements that were all rejected by the student and her mother. Therefore, the student returned to the Warwick public school district to complete what should have been 5 or 6 more months of education in order to earn sufficient credits to graduate high school. That occurred in approximately February 2011. The school department developed an IEP that was accepted by the student and her parent. In addition, it appears that the IEP was designed to provide the student with meaningful education given her particular disabilities, i.e. the district offered an IEP that was reasonably calculated to enable the student to make progress appropriate in light of her circumstances, Andrew F. ex rel Joseph F. v. Douglas Cty

RE-1 No. 15-827, slip op. (US Mar. 22, 2017). Though a detailed IEP is the main component for delivery of a free appropriate public education, Lessard v. Wilton Lyndebouough Coop. Sch. Dist. 518 F3d. 18 (1st Cir. 2008) the methodology by which it is delivered is beyond the scope of the IEP. M v. Falmouth Sch. Dist., 847 F3D. 19 (1st Cir. 2017) In order to enhance her educational opportunities and maintain continuity for the student, the district continued to employ the services of Mrs. Leone, a retired special education administrator, to specifically oversee the student's education. The student did not graduate in 2012, nor did she graduate in 2013. As she was still lacking sufficient credits to graduate, the district provided the student with an updated IEP in 2014 that was directed at assisting her toward obtaining her diploma. The district continued to employ the retired administrator to provide direct supervision of the student's program. The IEP entailed transporting the student to and from 1-1 tutoring and credit retrieval sessions with the support of a social worker who served in the capacity of an educational coach, more or less. Transportation to and from "class" was a component of the IEP. The mode of transportation was not specified, and one would ordinarily assume that school transportation would be via a school bus. However, the student claimed an emotional inability to access the bus, so the district procured the use of a van from an outside agency. The petitioner/student alleges that the district failed in its requirement to provide transportation under her IEP. In support of this claim, the student and her mother testified as to one or two occasions when the van was not available. Their testimony does not coincide with that of school personnel. They also point to a period of time commencing in January 2015 when the district refused further use of the van after it had been dispatched to the student's home on three consecutive occasions when she did not use it. All parties agree that the district did continue to offer bus transportation after January 2015. The lack of van transportation is not a violation of the provisions of the IEP. The IEP required transportation.

The student also alleges that she was denied FAPE when her social worker was replaced temporarily by a retired guidance counselor with special education experience for 2 1/2 months in 2014. It is true that the IEP delineates the services of a social

worker. However, the district provided testimony that it was not able to locate a social worker who was available to fill in for Mrs. Fanion while she was out on medical leave. The district, student and parent agreed to the appointment of the guidance counselor to perform those services on a temporary basis. The interim appointment of the guidance counselor as the student's educational support person or "coach", especially when it was agreed to by the parties, is not a substantive deviation from the student's IEP. While the failure to implement a material or significant portion of the IEP can amount to a denial of FAPE. Sumter Cty Sch Dist 17 v. Heffernan ex rel T.H. 642 F3d 478 (4th Cir 2011), the party challenging the provision of services must show that the local agency failed to implement "substantial or significant provisions of the IEP". This tenet affords local agencies with some flexibility in implementing IEPs. Houston Indep School District v. Bobby R. 200 F3d 341 (5th Cir. 2000), cert denied 531 US 817 (2000), yet it still holds the district accountable for material failures and for providing a disabled student with a meaningful educational benefit. Andrew F, supra. This seems especially pertinent when flexibility is necessitated due to events that were not foreseen, such as Mrs. Fanion's injury, and to a unique class schedule. Material failure to implement the IEP is more than a minor discrepancy between the services provided and those that are required by the IEP. Savoy v District of Columbia 844 F.Supp. 2d 23 (DDC Feb. 2012) The focus is on the provision of services provided to the overall goal and the import of the services that were withheld on the IEP. This Hearing Officer views the supplanting of the social worker temporarily with a guidance counselor having special education experience as a de minimis deviation from the student's IEP. There was also no testimony indicating the clinical need for a social worker, only that a social worker was designated in the IEP.

The student further claims that it was her right to demand the replacement of Mrs. Fanion with another social worker, and that Mrs. Fanion's failure to relinquish that role amounted to a violation of the ethical standards of her profession. The question of Mrs. Fanion's ethical violations, if any, is not before this Hearing Officer. Mrs. Fanion testified that she operated in a "therapeutic" role for the student, i.e. gaining her trust

and being able to communicate with her toward achieving her attendance at school, but she stated that she was not providing therapeutic services to the student, as those services were being provided by the student's personal private therapist, Ms. Enos.

Mrs. Fanion served as the student's social worker from at least June 2013 until November 9, 2014 without complaint from the student. When the mother and student sought removal of Mrs. Fanion in November 2014, the student was preparing to undertake a medical leave from school to give birth to her first child, and she was only a few months shy of completing her education in March 2015. The district did not see the need to bring in and train a replacement social worker at that late date. This Hearing Officer does not find fault with that determination. It is clear that the district continued to offer Mrs. Fanion's services through March 2015.

The student claims entitlement to simultaneous instruction by 1-1 tutoring and credit retrieval. The IEP does not require that method of instruction delivery. It is evident to this Hearing Officer that the district did much to facilitate the student's completion of her education and attainment of her high school diploma. The student was offered credit retrieval courses in order to foster independent learning. When she stumbled with credit retrieval learning, the school district replaced it with live tutoring (chemistry and math, e.g.) to enable the student to engage face to face with the teacher and communicate her difficulties with the particular subject. Those actions were taken to assist the student, not to set her back.

At one point in her testimony, the mother contended that the school district violated the IEP by discontinuing the student's private gym membership. In fact, the gym membership was yet another example of the attempts by the school district to lessen the anxiety of the student by allowing her to complete her physical education requirement in her own way and at her own speed. The student did not access the gym membership, so it expired and was not renewed. Instead, Mr. Doyle, the physical education teacher

created a gym curriculum tailored specifically to the student at Tollgate High School, and he provided 1-1 coaching until she completed the physical education course work necessary to graduate.

Finally, the district assigned school personnel to mentor the student toward completion of her Senior Project that is also a graduation requirement. Evidence suggests that the student did not keep any of her appointments with him.

In addition to the foregoing, the Petitioner/student also alleges that when she filed her federal court complaint in 2014, the district engaged in a pattern of retaliation against her. The mother and the student claim that everyone in the school system, even those not involved in her education, retaliated against her in vague ways, and specifically, that Mrs. Fanion retaliated against her by disclosing her pregnancy to the school department's legal counsel who then mentioned it at the federal district court hearing on August 6, 2014. There is no evidence at all from anyone that Mrs. Fanion provided that information to the school department's attorney. In fact, Mrs. Fanion expressly denied doing so. The student also testified that on one occasion, Mrs. Fanion didn't say "hello" to her when she got in the van, on another occasion Mrs. Fanion texted her with some school information at 8:00 pm in the evening, and one day she carried on a conversation with the van driver about a serial killer within hearing range of the student. She said these events were purposeful, retaliatory, and upsetting to her.

Regarding the retaliation claim, this Hearing Officer lacks the jurisdiction to decide claims brought pursuant to Title II and Section 504, and, further, cannot award compensatory or punitive damages. The parties did agree that one of the issues to be decided by this Hearing Officer was whether the district engaged in a pattern of retaliation against the student for her initiation of a complaint in the federal district court. The parties specifically did not refer to retaliation as it is defined under Title V. This Hearing Officer will address the mutually agreed upon issue as solely a question of whether the district engaged in a pattern of retaliatory action(s) against the student

such that she was denied FAPE.

In support of their claim that the district retaliated against the student, legal counsel cites several factors. First, the petitioner/student alleges that there were a significant number of "class" cancellations. The record is clear that during the period in question, there were approximately 129 "school sessions" scheduled. Of that number, the student missed between 71 and 74 of them, she attended 34 of them and 21 were canceled or school was not in session on some of those days. Of the available sessions, that number being 108, the student, for reasons of her own, missed 68% of them. Neither party presented any evidence of student attendance from the date of her return to Warwick from the Grove School in February 2011 until March of 2014, so any allegation that there was an increase in missed school days attributable to failure of the IEP and FAPE is not supported by any evidence and is purely speculative for the period from March 2014 through March 2015.

The petitioner/student also argues that the district retaliated against her by assigning a guidance counselor as her assistant when her assigned social worker was out on medical leave. The testimony supports a finding that the district was not aware that the social worker's leave would encompass a period in excess of 3 months, that the district sought and was unable to secure a social worker who was available for the student's particular schedule, and that the issue was discussed with the parent who agreed to the temporary assignment of the guidance counselor. The assignment of the guidance counselor was necessitated by the unexpected injury to the social worker, and it was not motivated by any intention to inflict harm upon the student. And, as indicated earlier herein, the temporary assignment of the guidance counselor constituted a de minimis deviation from the IEP.

The petitioner/student also alleges that depriving her of credit retrieval instruction simultaneous with her 1-1 tutoring in the same subject matter was a retaliatory action.

In fact, the testimony and demonstrative evidence establish that they were never offered together. Further, it was shown that the student was experiencing a difficult time succeeding in chemistry and perhaps some of her math courses, as a result of which credit retrieval in those subjects was discontinued and replaced with face to face live tutoring. It would appear that this action was undertaken by the district to assist the student toward graduation, not hinder her.

The petitioner/student states that she was denied the transportation services that were mandated by her IEP in response to the filing of her court complaint. There is no evidence to suggest that she was denied transportation services from March 2014 through March 2015. Despite the IEP indicating only that transportation services would be provided without specifying the mode of transportation, the district acquiesced in providing the van transportation that the student preferred through December 2014 and into January 2015. It was only after the van arrived on three separate occasions in December and/or January, and the student did not access it, that the district terminated the van service and substituted bus transportation.

The petitioner/student says that prior to the filing of her court complaint, IEP meetings were held every month, and that following March 2014, the number of meetings was reduced in order to penalize her. IEP meetings are not required every month. Following March 28, 2014, the student was attending school with a "stay put" IEP that would not be extended beyond March 28, 2015. Therefore, there was no necessity for monthly IEP meetings. Further, the IEP that was in place required only quarterly reports of the student's progress, and those were provided to the student and her mother. Notwithstanding the foregoing, the testimony and evidence establish that the mother was provided with weekly progress reports derived from Mrs. Fanion's interaction with the student.

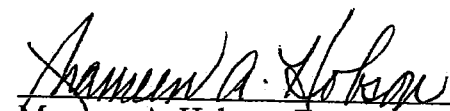
Finally, the petitioner/student complained that the district's refusal to communicate with her and her mother following her filing of the court complaint, except through legal

counsel, amounted to retaliation. The testimony of school department personnel indicates that all of the staff continued to communicate and engage directly with the student relative to her education. Ancillary issues and matters not specifically within the purview of the student's educators were referred to the district's legal counsel. Where there is litigation pending, it is appropriate that the parties consult legal counsel relative to the management of issues that are before a legal tribunal and that are not directly germane to the delivery of educational services.

Looking at the other side, this Hearing Officer does not find it credible that the student's mother obtained and publicized Mrs. Leone's personnel and pension records as a concerned citizen in order to amplify and address her budgetary concerns regarding the operation of the school department to city councilors, state legislators and the media/press. It is clear that in doing so, she was attempting to discredit Mrs. Leone and other members of the Warwick School Department in an effort to bolster her own agenda and possibly cause them to lose employment. In the view of this Hearing Officer, retaliation, if any, was initiated by the mother against the Warwick School Department and not the other way around.

In reviewing this case in its entirety, the Hearing Officer concludes that the Warwick School Department provided the student with a free appropriate public education during the period from March 28, 2014 through March 28, 2015. The IEP that was in place was specifically designed to meet the student's individualized needs. The student's failure to access her education was not caused by the lack of an appropriate IEP or the failure of the district to provide FAPE. Likewise, it was not attributable to any action(s), unintentional or retaliatory, on the part of the district or its personnel. The petitioner/student's claim of entitlement to further education at public expense via an award of compensatory education from the Warwick School Department or for other equitable relief is hereby denied.

Entered this 28th day of April 2017



Maureen A. Hobson, Esq.
Impartial Due Process Hearing Officer

CERTIFICATION

I hereby certify that a copy of the within Administrative Decision was provided to Sonja Deyoe, Esq., Jon Anderson, Esq., The Director of Special Education for the Warwick School Department and the RI Department of Education on the 28th day of April 2017.

