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

**SPECIAL EDUCATION
SERVICES**

In the Matter of)
[redacted] student)
and)
[redacted])

Before
Alfred Spitzzeri
Impartial Hearing Officer

ISBE Case No: 2008-0040

ALFRED A. SPITZZERI, Impartial Due Process Hearing Officer

DECISION AND ORDER

Preliminary Information

The matter in this due process hearing concerns the rights of [redacted] a 13 year old girl with attention deficit hyperactivity disorder(ADHD), depression and oppositional disorder (ODD)to receive a free, appropriate, public education (FAPE) in light of allegations that she is subjected to such a level of teasing and bullying in her current school environment at the [redacted] that it interferes with her ability to learn. [redacted] seeks the following relief for her daughter: Placement in a different (unidentified) public school setting in another school district, since her present school district consists only of the [redacted] The undersigned Hearing Officer has jurisdiction to hear and decide this case under 105 ILCS 5/14-8.02a of the Illinois School Code. The parties were informed of their rights concerning due process hearings under the Illinois School Code (105 ILCS 5/14-8.02a), the Code of Federal Regulations (34 CFR Sec. 300.509) and the Illinois State Board of Education Regulations concerning special education hearings (23 Ill. Admin. Code Sec. 226, subpart g).

Procedural History

The petitioner filed a request for due process on August 10, 2007. Their request for due process alleged that [redacted] was then a 12 year old girl with attention deficit/hyper activity disorder, oppositional defiant disorder and depression. She began attending [redacted] in the [redacted] when she entered the third grade. During the seventh grade at [redacted] the only school in the district, she received a 10-day suspension on April 19, 2007. The suspension followed an incident involving a fight which broke out over her and another classmate in the hallway near the student's washroom, and the subsequent discovery of a threatening note in her notebook. The 10-day suspension was reduced to five days following the student's enrollment in counseling.

After her suspension, [redacted] received homebound tutoring from a special education teacher, [redacted], and did not return to school for the balance of the

2006-2007 school year. She continues to receive such homebound tutoring in accordance with stay put provisions under IDEA. 20 U.S.C. § 1415(j).

██████████ was first determined to be eligible for special education at an IEP conference held on September 29, 2005. Ex. Number 5, School District ("SD") Amended Document List. Attending the IEP conference were ██████████ Mr. ██████████ the principal; Mr. ██████████, the school psychologist; Ms. ██████████ the school social worker; ██████████, a general education teacher; a special education teacher, ██████████; the school superintendent, Dr. ██████████ and two other general education teachers, Mrs. ██████████ and Mrs. ██████████. According to this IEP, the only parental concerns listed were that "Mom wants ██████████ to get good grades in school." According to the evaluation results ██████████ was on medications such as Concerta, and has poor attention skills. She must wear eyeglasses to correct her vision, but her hearing appears to be fine.

In the area of general intelligence/cognitive processing, ██████████ full scale IQ was an 89 as reported by the school psychologist on March 2, 2005. Verbal comprehension was 93, perceptual reasoning was 84, working memory was 94 and processing speed was 100. These scores fall within the average to low average range. Ex. 5, SD Amended Document List. Student's strengths included processing speed, working memory and verbal comprehension. Student needs were perceptual reasoning.

In the area of academic performance, ██████████ earned scores in the average range on standardized testing for reading, spelling and math. SD Ex. 5.

Under the area of disability analysis, ██████████ was found to have the following impairment through the IEP process: Emotional disorder.

██████████ signed the IEP on September 29, 2005 agreeing to ██████████ placement at ██████████.

The following goals were identified at ██████████ September, 2005 IEP meeting: Under the general category of "Behavior", the goals were for ██████████ to meet classroom expectations and to seek assistance appropriately. The IEP team recommended that ██████████ be placed in a regular education classroom with support from the resource teacher and accommodations including modification of tests and settings. Exhibit 5. A behavior intervention plan was also developed to target behavior such as disorganization.

During the 2006-07 school year, ██████████ received education in general education classes except for math and one period of study skills-resource room. For the most part, she was not a disciplinary problem at school. She generally earns passing grades, except that she did receive an "F" in physical education because of her absences from school caused by the suspension and being on homebound tutoring.

On July 30, 2007, another IEP conference was held. The school district proposed that ██████████ be educated at ██████████ solely in a special education classroom.

The parent objected to this on the grounds that it would be too restrictive. The school district also recommended that [REDACTED] be assigned a one-on-one aide to escort her during all unstructured periods in school. The parent also objected to his recommendation on the grounds that it was too restrictive and inappropriate for a student of [REDACTED] age.

[REDACTED] has completed 7th grade academically. However, due to a late birthday in September, she is almost a full year younger than most of her peers. Some consideration was given to holding [REDACTED] back a year. However, this idea was rejected because if she stayed at the same school, it would only subject her to more peer harassment and teasing. The parent would like [REDACTED] held back in 7th grade but believes she can only be successful if she is placed in a 7th grade classroom in another school. Unfortunately, the [REDACTED] is a one school school district which would necessitate transferring her to another school district.

A pre-hearing conference was conducted telephonically with the attorneys and parties present. Issues were clarified and they exchanged witness and document lists.

The gist of the issue presented by the parent's due process request is as follows:

Does [REDACTED] current placement at [REDACTED] deny her a free, appropriate public education because of the school's alleged indifference to actions allegedly involving peer harassment, teasing and bullying of [REDACTED] to such an extent that the learning environment has become so hostile that she cannot receive FAPE at that school.

March 22, 2007 School Incident

On March 22, 2007, another student, allegedly without provocation, struck [REDACTED] in the head during a school passing period. The incident was recorded on surveillance videotape (no audio). A copy of the tape was submitted in the parent's packet but not identified or viewed during the hearing. The hearing officer did view it privately and has attached the CD of the video as Hearing Officer Exhibit A. The Hearing Officer viewed the tape several times, and did not see any altercation between any students. However, the Hearing Officer will assume for purposes of this hearing that the altercation did in fact take place since the school district also introduced evidence of it by way of testimony of various witnesses and took action as a result of the incident by suspending the two students involved.

April 19, 2007 School Incident

Less than a month after the altercation near the drinking fountain by the bathroom in March, 2007, there was another troubling incident involving [REDACTED]. At that time, a teacher discovered that [REDACTED] had written words in her school notebook reflecting

aggression against other students and reported the incident to school authorities. [REDACTED] Exhibit 61, pp. 211-212. On one page, the word "KILL" is written in letters large enough to take up a whole 8 ½ x 11 inch page of the notebook. [REDACTED] Exhibit 61, p. 212. On another page, six students are specifically identified by name with comments such as "hope he dies" or "kill him". [REDACTED] Exhibit 61, p. 211. As a result of the April 19th notes, [REDACTED] was suspended. She was given counseling by counselor [REDACTED] and a medical consultation, by [REDACTED] [REDACTED] Exhibits 28 and 29, pp. 174-175. Both the counselor and her nurse recommended in writing that she not return to [REDACTED]

Remedies Sought

The parent, [REDACTED] requests an Order requiring that the school district transfer [REDACTED] to another public school district and to pay for the transportation and tuition thereof.

Findings of Fact

Parent's Case in Chief

The hearing commenced on November 15, 2007 at a neutral site in [REDACTED] Illinois. Testifying that day were Dr. [REDACTED], the school superintendent; Dr. [REDACTED], the school psychologist; [REDACTED] the family therapist; [REDACTED] the [REDACTED] principal; and [REDACTED], a special education teacher at [REDACTED]. A summary of the first day's hearing is provided below.

Dr. [REDACTED] has been the school superintendent for approximately five years. He first met [REDACTED] when he came to the district in 2003. [REDACTED] is a small K-8 school with approximately 280 students. [REDACTED] is a small town with only about 2,000 people. Other cities in the area include [REDACTED] [REDACTED] and [REDACTED]. Several of these schools feed into the local high school [REDACTED].

Dr. [REDACTED] first recalled [REDACTED] mentioning that [REDACTED] was being bullied about one or two years ago. He does not recall [REDACTED] ever calling the school and leaving any messages for him. The school handbook includes a "bullying policy" which states that "bullying and/or intimidation of others are strictly prohibited by the Board of Education..." [REDACTED] Exhibit at p. 516. Dr. [REDACTED] further testified that the school does not tolerate bullying.

The school also has a harassment policy. [REDACTED] Exhibit at p.538. Dr. [REDACTED] testified that the harassment policy was a form of a bullying policy. It states that "no person... shall harass or intimidate another student based upon a student's sex, color, race, religion, creed..."

Dr. [REDACTED] testified that if any bullying was reported, that Mr. [REDACTED] as the school principal, would follow up with the students involved. If the bullying occurs in the classroom and is reported to the classroom teacher, then the teacher attends to it. Teachers are trained on PBIS (Positive Behavior Intervention Systems). For example, if a student presents a behavioral problem, the first time the teacher will redirect the student, the second time the student is sent to a "buddy teacher," the third time involves counseling and if warranted, a referral to the office.

Because it's a small school, and Dr. [REDACTED] spends a lot of time in the building, he knows about 80% of the students by sight. He has never witnessed [REDACTED] being picked on by any other students. He only recalled one time that [REDACTED] called him to complain about students bullying [REDACTED]. He did not recall any specifics. He believes he referred her to the principal for follow up. Dr. [REDACTED] was asked about the March incident where the fight occurred by the drinking fountain near the washrooms. According to witness reports, a boy named [REDACTED] came by waiting to get a drink, he and [REDACTED] began talking, [REDACTED] swung [REDACTED] hit her and she hit him back. Dr. [REDACTED] investigated the incident. He called the parents and the police also came in. His conclusion was that the fight was the result of a disagreement from the night before. Reportedly, [REDACTED] and [REDACTED] were friends. He would not describe the incident as involving bullying. A teacher named [REDACTED] was in the doorway just 10 to 15 feet away when the incident occurred. The incident was reported and both students were punished.

Dr. [REDACTED] also testified regarding the April 19, 2007 notes written by [REDACTED] in which she specifically identified certain students by name and wrote threatening comments about them. Subsequently, [REDACTED] was assigned a five day out-of-school suspension. See letter of Mr. [REDACTED] dated April 20, 2007, [REDACTED] Exhibit at p. 219. Dr. [REDACTED] testified that he had been a school superintendent and school administrator for many years in many different school districts and he considered this to be a very serious thing because it was the first "kill/maim" he had ever seen. He agreed that [REDACTED] was generally not a disciplinary problem, except for the fight by the water fountain and writing this list.

Upon examination by the school district's attorney, Dr. [REDACTED] testified that the school district has some proactive programs to address these types of concerns. They have a character education program that addresses conflict resolution, bullying and working together. Each year they implement a different program, for example, "don't laugh at me." The program is taught in every classroom, every week, for 30 minutes a week. In his opinion, based upon being in education for 34 years, in six different school districts, these programs are by far the most thorough in any educational setting he has been in.

[REDACTED] is a school with multiple challenges. 75% of the students are low income, 58% white and 42% minority. Approximately 30-60% move in and out of the school district each year. Approximately 30% of the students receive some type of special education.

In July of 2007, another IEP team meeting was held. Dr. [REDACTED] was a member of the team. Mr. [REDACTED], the principal, is also a special education coordinator. In his opinion, [REDACTED] is the best school for [REDACTED] to be in. For one thing, a small school offers certain advantages. Everyone knows her. Also, she has been there since third grade. Dr. [REDACTED] does not think that being home tutored is the best thing for [REDACTED]. Her home tutor is [REDACTED] who also is the special education teacher for the school. Dr. [REDACTED] feels that [REDACTED] needs could be met in Ms. [REDACTED] self-contained special education classroom. In such a setting, no one could bully her and she would feel safe.

IEP July 30, 2007

Another IEP meeting was held on July 30, 2007. See [REDACTED] Exhibit at pp. 1-43. Parental concerns included [REDACTED] earning good grades, developing better organizational skills, having better peer interaction and making better choices. No new academic testing appeared to be done at that time. There were a number of concerns in the area of social emotional status such as [REDACTED] having been exposed to violence from a very young age, not having contact with her father, seeking inappropriate attention from males, anxiety, self-exclusion from peers, etc. [REDACTED] Exhibit at p. 3. A placement was recommended for her which included 77% of the time in a general education class, with the balance in special education resource programs. The school also recommended that she have a one-on-one aide for unstructured periods of the day.

The next witness was Dr. [REDACTED] the school psychologist. Her CD is a [REDACTED] Exhibit, pp. 154-156. Her evaluation is at p. 157. Dr. [REDACTED] first met [REDACTED] in January of 2005. She was referred by the [REDACTED] for a psychological evaluation. She was not in special education at that time. [REDACTED] Exhibit, pp. 163-167. At that time [REDACTED] grades were falling and she was failing three classes. She also had social problems with peers. She had difficulty making friends. She also had poor attention, and exhibited anxiety and depression. Her diagnosis was anxiety disorder, depressive, ADHD and ODD.

An updated evaluation was done on August 24, 2007. [REDACTED] Exhibit, p. 157. This showed that [REDACTED] had made academic progress and was having fewer behavior problems at home. She did appear more agitated regarding the school and she mentioned the bullying at school, her suspension, and her not feeling safe. Some of the things that [REDACTED] complained about to her were that another student had spit in her hair and she was reportedly not allowed to call her mother to discuss it. [REDACTED] also complained about being called names and other students pushing her around. She became upset and would start to cry when she talked about school. Dr. [REDACTED] was not aware that [REDACTED] was on homebound tutoring at the time she saw her. Her mood was good as long as the discussion did not revolve around school. Dr. [REDACTED] had reviewed [REDACTED] previous IEPs and concluded the reason she was getting special education was for emotional disability and not for learning disability. She was getting special education for math in the resource room, but according to Dr. [REDACTED] testing, her math skills were in the average range and special education math would be too easy for her. What she

really needed was emotional support. P's Exhibit, pp. 14 and 100. Dr. [REDACTED] further testified that [REDACTED] academic skills were in the 6th to 7th grade age range, which falls within average. Dr. [REDACTED] also reviewed the IEPs of September, 2006 and July, 2007. P's Exhibit, pp. 1-13. In her opinion, a one-on-one aide would make [REDACTED] more of a target for teasing. She also questioned why [REDACTED] would need an aide since she does not have a behavior problem. Her concerns about the school's proposal to segregate [REDACTED] in the special education classroom would be that her academic and social progress could suffer. Dr. [REDACTED] also testified that bullying can interfere with a child's ability to learn. Based upon the July, 2007 IEP she reviewed, Dr. [REDACTED] opined that [REDACTED] could not make adequate progress at [REDACTED]. She is younger and more immature than her classmates. At this age, retention is really not an option. Retention could cause further social problems. She is also a rather large girl for her age and would stand out. Dr. [REDACTED] felt that [REDACTED] could be successful in another public school, but no such public school program was ever identified. She testified that children need to feel safe to progress academically and socially and that [REDACTED] does not feel safe at [REDACTED]. She also felt that the child should not have to be placed in a more restrictive special education setting in order to make her feel safe.

The next witness was [REDACTED] the family therapist. Ms. [REDACTED] is [REDACTED] therapist. She first met [REDACTED] October, 2006. [REDACTED] told her that she had been the victim of bullying on a daily basis. This included name calling, being spit on, kicked, hit, and being called "lice head" (reportedly this was due to the fact that she scratches her head a lot when she becomes nervous). [REDACTED] told Ms. [REDACTED] that she had no friends at [REDACTED]. However, she was engaged in after-school activities at another location and she did enjoy them. [REDACTED] reported feeling angry, lonely and frustrated. [REDACTED] complained to her that when she tried to report the bullying incidents, that nothing was done about it shows she stopped reporting them.

Ms. [REDACTED] saw [REDACTED] for counseling on half a dozen occasions between October, 2006 and March, 2007. P's Exhibit, p. 172.

Ms. [REDACTED] was asked about the threatening note [REDACTED] had written about her classmates. In her opinion [REDACTED] was not violent. Rather, she was merely expressing herself as she was sick of being picked on. Ms. [REDACTED] opined that the bullying interfered with [REDACTED] educational progress. She also believes it would be beneficial for [REDACTED] to attend another school. P's Exhibit, pp. 171, 174. Upon cross examination, she admitted that she was not aware that [REDACTED] had an anti-bullying policy or program in place. She also was not aware that during the 2006-2007 school year [REDACTED] grades actually went up in certain areas.

The next witness was [REDACTED], the school principal. He is also the person who handles the discipline. He did not have any records of [REDACTED] calling the school to talk to him about [REDACTED] and never recalls [REDACTED] trying to call him either. He testified that [REDACTED] never complained to him about any bullying incidents with her daughter. He testified that people have different opinions as to what constitutes

"bullying", but there is a policy in the student handbook and it is not tolerated in the school. [REDACTED] Exhibit at p. 516.

The next witness was [REDACTED] the special education teacher at [REDACTED]. Ms. [REDACTED] has a bachelor's degree in special education and a master's degree in education and leadership from Southern Illinois University. She is a certified learning-behavioral specialist. She has taught at [REDACTED] for four years. She has also served as [REDACTED] homebound tutor and sees her five hours a week.

As to bullying, Ms. [REDACTED] testified that this occurs in every school, especially among 7th and 8th graders. Mr. [REDACTED] also testified that this was common "middle school" behavior. She said that all of the teachers are aware of the bullying policy and that she, herself, is proactive about it. She takes care of incidents when she sees them and talks to students about them.

Ms. [REDACTED] has known [REDACTED] for two years. Before becoming her homebound tutor, she saw [REDACTED] for math and for study hall as a resource teacher. [REDACTED] never complained of students picking on her in her class. At the most, she only has eight students in her class, and usually there are only five or six students in her class. One time she did complaint that another student was "looking at me" but the complaint was so vague and ambiguous, nothing could be done about it. There was another time when [REDACTED] and another student had a disagreement and began kicking each other like "little kids on the playground." Ms. [REDACTED] intervened right away, talked to both students and told them she would not tolerate such behavior. She was not concerned that [REDACTED] complaints of bullying were not being addressed. She was not aware of what [REDACTED] did at lunch. When questioned as to whether she was ostracized by her peers, Ms. [REDACTED] testified that [REDACTED] had friends at school, but some of them moved away. Also, she played on the school basketball team which Ms. [REDACTED] coached.

Ms. [REDACTED] testified that the bullying policy is read to the class at the beginning of each year. Although all students are called names occasionally, she does not like to see it and does not accept it. She believes that [REDACTED] is not picked on any more than anyone else. This was also noted in her IEP. [REDACTED] Exhibit at pp. 1, 12, 16, 100 and 484.

When asked about her recommendation for [REDACTED] education placement, Ms. [REDACTED] agreed that [REDACTED] should be in all regular education classes, except for math (and study skills). However, since she has been homebound tutoring since last spring, it would be beneficial for [REDACTED] to be placed in Ms. [REDACTED] special education class full-time initially for transitional purposes.

The next witness was [REDACTED], a general education teacher at [REDACTED]. She has been there for seven years and teaches social studies for grades 5 through 8. She has had [REDACTED] as a student since 5th grade. She has only 15 students in her class, including others with disabilities. If she observes any incidents of bullying in her classroom involving any students, she takes care of it on the spot. She has never heard a child call [REDACTED] a name. [REDACTED] appeared to be happy in her classroom. [REDACTED]

complained that someone threw a pencil at her, but she never saw anyone throw a pencil at [REDACTED]. [REDACTED] would complain that she did not get along with a certain person, nothing specific, so Mrs. [REDACTED] would move her desk around. Mrs. [REDACTED] testified that she did not think [REDACTED] was being targeted by other students, and did not agree that [REDACTED] was frequently the object of bullying. [REDACTED] does have trouble with peer relations and social interactions. The teachers are aware of this and recognize it and try to pair her up with a buddy, for example. Mrs. [REDACTED] feels like she has a good relationship with [REDACTED]. She also notes that [REDACTED] played on the girl's basketball team and came to the school dance and that she seemed to have a good time and dance with some of the boys.

The next witness was [REDACTED] the school social worker. She is actually employed by the [REDACTED]. She is only at [REDACTED] a couple days a week. She has been involved with [REDACTED] from time to time since she started at the school. She saw [REDACTED] both individually and in group. However, she has not seen [REDACTED] since her out-of-school suspension in April, 2007. Therefore, she had no opinion as to [REDACTED] current social emotional status. In her group sessions, they worked on things like anger management, resolving conflicts, and "feeling type stuff."

The next witness was [REDACTED]. Born on September 15, 1994, she is currently 13 years of age. She proceeded to testify as to a series of incidents with various students where she was called names such as "lice head", "stupid", "freak", etc. She testified that she reported these incidents to her teachers and that the teachers told the students to leave [REDACTED] alone. One teacher she told was Mrs. [REDACTED] who told them to stop it. [REDACTED] wears eyeglasses, and had her hair in a ponytail for the hearing. She appeared to be of average size for her age, although perhaps a little heavier than most 13 year old girls.

[REDACTED] related incidents involving [REDACTED] who threw things and called her names; [REDACTED] who also called her names; [REDACTED] who laughed and made fun of her; [REDACTED] who threw things at her and made fun of her; [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] (the boy she got in the fight with by the water fountain outside the washroom in March of 2007). Some of the more conspicuous examples of teasing or bullying which she related were incidents where she would help the lunchroom aide sweep the floor during lunchtime, only to have other students throw stuff on the floor at her so she would have to sweep it up all over again. Another incident was when she placed her backpack by her locker and other students would kick it down the hall. [REDACTED] sitting next to her mother, often broke into tears during her testimony relating these events. Her demeanor was that of a sad little girl. [REDACTED] also joined her in shedding a few tears.

Due to witness availability, the upcoming holidays and scheduling concerns of the attorneys and hearing officer, the hearing was then adjourned by agreement of the parties to January 9, 2008.

The next witness was [REDACTED] the school secretary. She has been the school secretary for 25 years. She is familiar with many of the students at the school and

last year also worked in the school cafeteria as the cashier. She described the cafeteria as the size of a gymnasium. She often observed the students eating lunch. She observed [REDACTED] during lunch sometimes eating in the office, but mostly eating in the cafeteria. Other students also chose to have lunch in the office on occasion. She testified that [REDACTED] was not in the office often, and no more than any other student. She had no recollection of [REDACTED] ever complaining to her to tell Mr. [REDACTED] about children bullying [REDACTED].

The next witness was [REDACTED] the former playground/lunchroom attendant. She also supervised recess. She knew [REDACTED] and observed other children calling her names and throw food on the floor so she would have to sweep it up during lunch. She made out disciplinary referrals and reported the incidents to persons in the office such as Ms. [REDACTED], Mr. [REDACTED] and Dr. [REDACTED]. Reportedly they told her "We'll take care of it."

Ms. [REDACTED] also testified that [REDACTED] was isolated from the other students a lot. For example, she would walk around the playground by herself. She and the other monitor tried to alleviate the bullying by keeping [REDACTED] close to them. [REDACTED] was never the instigator, nor was she a behavior problem. Ms. [REDACTED] also testified that she, herself, was even physically threatened by certain students and that it appeared that a number of the students had a hard time with authority. She only worked there for one year. One day the kids were being rowdy, shoving each other, and when she went to break it up, slipped and fell dislocating her shoulder when a boy fell on top of her. She was not rehired for the 2007-08 school year. She further testified that she was told she was giving out too many disciplinary referrals to the students.

The next witness was [REDACTED]. Mr. [REDACTED] had been on the school board for five years. They meet monthly. He recalled [REDACTED] coming to a school board meeting on May 14, 2007 and making a presentation to the school board. He recalled going into executive session and there being a discussion about bullying at the school and asking for a copy of the bullying policy. His recollection of [REDACTED]'s comments at the hearing was somewhat vague, but he did recall the mother asking for zero tolerance policy. He also recalled [REDACTED] telephoning him before the next board meeting and that they discussed his son who she knew. She also told him that she wanted her daughter transferred to another school. He told her he would forward her request to the superintendent. At the next school board meeting in June, there was an agenda item on the topic. However, no action was taken as no motion was made. [REDACTED] was not present for the June board meeting.

The next witness was Mrs. [REDACTED]. She is a 41 year old homemaker with three children. The family moved to this area from [REDACTED] Iowa [REDACTED] began attending [REDACTED] in the third grade. Her problems began near the end of fifth grade, before she was identified as a special education student.

[REDACTED] filed for due process because she allegedly had trouble getting services from the school district. [REDACTED] Exhibit at pp. 284-285. Initially, she had requested a

Section 504 evaluation during the fall of 2004 when [REDACTED] was in fifth grade. Reportedly, she received no response from the school district to that request. Dr. [REDACTED] however, previously testified that after having received such a request from [REDACTED] and discussing it with her, that [REDACTED] declined to accept any special education services. [REDACTED] Exhibit at p. 224.

[REDACTED] testified that kids started calling [REDACTED] names at the end of the her fifth grade year such as "stupid", "ugly", and "four eyes". At first, she told [REDACTED] to handle it herself. [REDACTED] also spoke to her general education classroom teacher at the time, Mrs. [REDACTED]. Mrs. [REDACTED] told [REDACTED] she should come tell her about this when it occurs.

In the fall, in sixth grade [REDACTED] came home from school dirty. When [REDACTED] asked her what happened [REDACTED] told her that some kids had grabbed her and thrown her to the ground while calling her "stupid" and "idiot".

[REDACTED] testified to another incident when someone named [REDACTED] spit on [REDACTED]. This happened at recess [REDACTED] told her mom that she asked to call home and the school told her she could not do so. Another child named [REDACTED] was present when this occurred. [REDACTED] called [REDACTED] and was able to verify that the incident did take place. The reason [REDACTED] spit on [REDACTED] was because she would not get off the swing. [REDACTED] then confronted school administrators about this. The school principal, Mr. [REDACTED] told her that the student who spit on [REDACTED] was the "worst kid in the school." Dr. [REDACTED] the superintendent, told [REDACTED] that [REDACTED] should not have been allowed on the playground for recess in the first place because she was mad over an incident earlier in the day when she had been kicked while in line.

[REDACTED] reported that in the fall of 2005, [REDACTED] was also the subject of certain sexual comments made by some of the male students. No specific details about the substance of the comments were provided. [REDACTED] said that a meeting was held with the school officials and that [REDACTED], the school social worker, told her that [REDACTED] was an instigator and would make comments back to the boys. She also said that Dr. [REDACTED] asked whether the boys were being mean to her or whether they really liked her.

[REDACTED] testified that [REDACTED] has no true friends and has trouble sustaining friendships. [REDACTED] saw [REDACTED] for social work services in sixth and seventh grades. [REDACTED] contacted her two times on the phone to tell her that [REDACTED] was still being bullied. Ms. [REDACTED] response was that it was [REDACTED] fault because she was not using "T" messages and did not employ other strategies such as just ignoring it.

[REDACTED] testified that in sixth grade she had to replace [REDACTED] backpack four times. This was because other students would pick up her backpack and throw and kick it down the hall.

[REDACTED] also spoke to her [REDACTED] classroom teacher, Mrs. [REDACTED] who said that [REDACTED] was a sweet girl and she did not know why the kids were mean to her. At one point during her testimony, [REDACTED] began to cry.

Mrs. [REDACTED] did reprimand one student for calling [REDACTED] names. She took him out into the hall and told him to apologize. When he refused to do so, Mrs. [REDACTED] sent the boy to the principal's office.

When [REDACTED] was last in school, she had a hard time falling asleep and complained of headaches and stomachaches. Her mood was better over the summer and she did not complain of headaches or stomachaches and would even get up early in the morning. As the seventh grade school year approached [REDACTED] reportedly told [REDACTED] she did not want to go to school.

[REDACTED] raised an issue over [REDACTED] sixth grade report card. See [REDACTED] Exhibit at pp. 182, 182a, and 182b. It appears that one of the grades was changed from an "F" to a "P". The actual report card she received at home indicated that her "social skills" grade was an "F". The passing grade, however, appeared in the school's packet presented for this hearing and [REDACTED] denied ever seeing a copy of that grade. The school district employees testified that the "F" must have been a clerical error because when you look at the other grades leading up to that which were passing, it would not have made any sense for her to have failed the class. [REDACTED] also said that [REDACTED] told her that per her IEP, she was to get a progress report by way [REDACTED] report card. However, no progress report was attached to the report card.

In the fall of 2006, [REDACTED] began counseling with [REDACTED] of the [REDACTED]. [REDACTED] did not want to return to school in the fall. She kept to herself. She seemed hurt and angry. She described an incident where [REDACTED] was jumped getting off the school bus by two girls and a boy after school on her way home. [REDACTED] reported the incident to the school and spoke to Mr. [REDACTED]. He told her that there was nothing he could do about it since it occurred after school and off the school premises and he advised her to call the police. He told her he had also talked to the students about it and that it was quashed.

[REDACTED] testified [REDACTED] loves school. She wants to learn. [REDACTED] told Mrs. [REDACTED] what was going on and Mrs. [REDACTED] told her that she did not tolerate any bullying and would keep an eye [REDACTED].

During the second semester of seventh grade, [REDACTED] became concerned about some things which she perceived to be suicidal threats on the part of [REDACTED]. [REDACTED] had drawn a picture of a girl hanging herself with a rope. [REDACTED] found it under [REDACTED] pillow at home. This occurred around February of 2007. When [REDACTED] asked [REDACTED] about the drawing, [REDACTED] told her that this was a picture of her crying. Further, she told her mother that she would rather be dead than miserable.

[REDACTED] made an appointment with Mr. [REDACTED] and told him that she and [REDACTED] were tired of the bullying that had been going on for two years. Mr. [REDACTED] told her that he thought the situation had improved because she was not complaining as much. She told him that [REDACTED] stopped complaining because nothing was being done

about it. Mr. [REDACTED] told her that he could do nothing about it because he was not aware of it.

Upon cross examination, [REDACTED] admitted that in reviewing her final sixth grade report card, all of her previous social skills grades leading up to the final grade were passing. [REDACTED] Exhibit at pp. 182, 182a, and 182b. She was opposed to [REDACTED] returning to [REDACTED] due to the constant bullying, her suicidal thoughts and because mom felt she would not be successful socially or academically. Upon cross examination, she did admit that [REDACTED] had made academic progress from fifth grade to sixth grade and from sixth grade to seventh grade. Also, there was no mention in Dr. [REDACTED] psychological evaluation about any reports of suicidal threats, nor did the psychologist express any opinions about whether [REDACTED] would commit suicide when she returned to [REDACTED]. The drawing of the girl hanging herself with the rope no longer exists as [REDACTED] threw it away. She did not even show it to [REDACTED] the family therapist. Thus, the only evidence of its existence came in the form of Mrs. [REDACTED] verbal testimony. The undersigned questions the existence of such a drawing, since it was never shown to any of the therapists, or teachers, or retained for purpose of counseling or hearing purposes.

The next witness was [REDACTED], the principal. He talked about the office referral process, the anti-bullying policy and a program called PATHS. This program promotes alternative thinking strategies focusing on the student's feelings, the importance of "I" messages and strategies for conflict resolution. The program was already in place at the school when he arrived there about three years ago. This is a mandatory school wide program which was taught 30 minutes a week until funding ran out.

When Mr. [REDACTED] was hired, his first position was that of teacher/dean. In the school over 70% of the students are below the poverty level and about 20% come from single parent homes. He obtained a grant and implemented a new program at the school called "Making Character Count". This complimented other programs in the school. They began collecting data and found that disciplinary reports dropped dramatically. He reported a significant decrease in bullying complaints this year. He attributed this to the "Don't Laugh at Me" program which is mandated at the school. He testified that the teachers and students love it and they even have an anti-bullying t-shirt contest. It is a proactive program.

In Mr. [REDACTED] opinion [REDACTED] could return to [REDACTED] and be successful. He also said that the school wants her back. Another proactive program which the school has implemented is called "Peace Works". [REDACTED] The school has made numerous accommodations for [REDACTED] and is willing to continue to do so. [REDACTED]

At this point, the parent rested her case.

School's District's Case in Chief

The first witness called by the school district was [REDACTED]. He works for [REDACTED] located in [REDACTED] as a case manager. He has a bachelor's in psychology and ran the PATHS program at [REDACTED] for four years. His title is Skill Development Specialist (counselor). The program focused on dealing with emotions and self-control. The PATHS program also had a bullying component which addressed things like peer pressure and cliques. He was also the athletic director at [REDACTED] for three years, so he was acquainted with many of the students.

Mr. [REDACTED] did not recall any problems with [REDACTED] at home basketball games. He did notice that she was not included in certain things and, for example, would sit further down on the bench away from her teammates. He did observe good coaching interaction and saw that the coach got all the girls into the game, including [REDACTED]. He never observed her being bullied during any of his involvement with PATHS. He was the PATHS program implementer from 2000 to 2004. The purpose of the PATHS program is to try and change the school environment to one of positive peer pressure. So, for example, the class would be given a treat if no one bullies anyone, or they might earn points toward homework passes, etc. The school psychologist was a consultant for the program. He was not aware that [REDACTED] had been the subject of bullying for the past two years.

The next school witness was [REDACTED]. She is employed as a one-on-one aide by the school district and also as a bus monitor and driver. She only knew [REDACTED] from her role as a bus driver. She testified that she saw [REDACTED] and her mother at a local Wal-Mart in August of 2007. At that time [REDACTED] told her that she was not coming back to school because "everybody picks on me." She also told Ms. [REDACTED] that her mother did not want her returning to the school. When she asked [REDACTED] where she would be going to school [REDACTED] replied [REDACTED] or [REDACTED].

The school rested its case. It should be noted that the procedure followed by the Hearing Officer in this case permitted the school district to ask questions of the witnesses called by the parent even if it was beyond the scope of their direct examination so as to expedite the process and preclude the necessity of recalling the same witnesses in the school's case in chief.

Rebuttal

The parent called one witness in rebuttal, Dr. [REDACTED]. He was asked questions about why the parent did not receive a progress report as provided by [REDACTED] IEP, why the report card for social skills in the 2006-07 school year appeared to be altered, and he had no personal knowledge regarding same. He denied that the report card had been altered. Rather, the report card had been corrected to show the true grade. This was based on the fact that she passed the first three-quarters of the school year so she could not have flunked the class for the year.

CONCLUSIONS OF LAW

Under state and federal law, students with exceptional needs have a right to a "free appropriate public education". 20 USC, Sec. 1400(d). The term "free appropriate public education" (FAPE) means "special education" and "related services" that are available to the student at no charge to the parent, and that meet the state's educational standards, and that conform with the student's individual education plan (IEP). 20 USC, Sec. 1401(8).

The parameters for adequacy of a student's IEP were set forth in *Bd of Educ. of the Hendrick Hudson Sch. Dist. v. Rowley*, 458 US 176 (1982). The United States Supreme Court determined that the student's IEP must be reasonably calculated to provide the student with some educational benefit. The court in *Rowley* concluded that the Individuals with Disabilities Education Act (IDEA) did not require school districts to provide special education students with the best education available or to provide instruction or services that maximize the student's abilities. Instead, the Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instruction and related services which are individually designed to provide some educational benefit to the student. *Rowley*, at 207-208.

The testimony in the case was inconsistent and contradictory depending on who was testifying at the time. The testimony of [REDACTED] and [REDACTED] would lead one to the conclusion that she is the victim of an organized campaign of teasing, bullying and harassing by the other students and that the school teachers either ignore it or passively condone it by doing nothing about it. The testimony of Ms. [REDACTED] the lunchroom attendant/recess monitor is largely discounted as, in the opinion of this Hearing Officer, she was obviously a disgruntled former employee with her own motivation for testifying against the school district.

The school staff did identify and admit to a number of incidents involving [REDACTED] to which they took appropriate action. The school also has a number of proactive programs in place and had objective documentation that the number of major disciplinary referrals and incidents of bullying had decreased over the past few years. See School District chart. For example, [REDACTED] testified that much of the bullying occurred in the classroom. This was contradicted by [REDACTED] and Dr. [REDACTED]. Further, it does strain credibility to think that school staff would permit such activity to occur on a regular, ongoing basis such as the throwing of erasers, pencils, and pens and statements such as "freak", "stupid", "lice head" and "retarded" and either be ignorant of it or do nothing about it. In fact, Dr. [REDACTED] testified that [REDACTED] told her that most of the problems occurred in unstructured settings away from the teachers such as in the hallway, lunchroom and recess. [REDACTED] report of May 11, 2007 also makes no reference to any incidents in the classroom. In fact, the consensus of the testimony of a number of witnesses was that when [REDACTED] would make a complaint, it was often after the fact and often contained few, if any, specific details as to who, what, where or when.

The parent contends that [REDACTED] cannot receive FAPE at [REDACTED] because of the excessive amount of bullying to which she is exposed to there. The parent relies on *Shore Regional High School Board of Education v. PS, on Behalf of PS*, 381 F 3rd 194 (2004). However, unlike that case, there was no testimony that no matter what program or process was implemented at [REDACTED], that [REDACTED] would not be in a safe environment. Further, in that case, the psychiatric testimony was undisputed that the student's life and health were at stake if the student continued at that school due to the extraordinary extreme bullying. Moreover, in the case of *PS*, above, the student's grades were falling where [REDACTED] have been improving. Additionally, in *PS*, the child study team had recommended an alternative placement which the school ultimately rejected. There was also evidence there that the child had in fact been enrolled in the other school, and was doing well. Such testimony/evidence was totally lacking in this case. A final distinction is that [REDACTED] is a very small school, with small class sizes, whereas the [REDACTED] contained a very large student body that would not be able to provide for the student's emotional needs.

The parent alleges that the school district has failed to provide [REDACTED] with FAPE based upon both procedural and substantive violations of IDEA. The Hearing Officer will first address the alleged procedural violations.

Procedural Violations

1. The parent alleges the school district failed to provide prior written notice of its refusal to place [REDACTED] in a different school.

2. Under *Board of Education v. Rowley*, 458 US 176 (1982), a school district's requirement to provide FAPE is satisfied when the school provides personalized instruction with sufficient support services to permit the handicapped child to benefit educationally from that instruction.

3. Under *Rowley*, a school is not required to provide a program which would maximize the potential of each handicapped child.

4. In determining whether the school district has complied with its statutory obligations, the court must first determine whether the school has complied with the procedural requirements of the law; and secondly must then determine whether the IEP was developed through procedures reasonably calculated to enable the child to receive educational benefits. If those requirements are met, the school district has complied with obligations imposed on it by congress, and the courts can require them to do no more. See *Board of Ed. v. Rowley*, above.

5. The parent claims that because the school district failed to provide her with prior written notice of its refusal to place [REDACTED] in a different public school, that she has been denied FAPE. See parent's written closing argument, pp. 1-3.

6. The Hearing Officer rejects this argument. The school district has made it clear at both the May 2, 2007 IEP conference and the July 30, 2007 IEP conference that it

school in the region. Thus, even if the Hearing Officer felt that the parent had met her burden of proof, which she has not, this Hearing Officer would be extremely reluctant to enter an order compelling the school district to place the child in some other unknown public school, sight unseen, without any information as to the qualifications of the teachers, availability of special education and resource services, student, teacher ratios, bullying problems extant in said school, etc.

6. Under IDEA, the burden of proof and burden of persuasion in an administrative hearing challenging an IEP is properly placed upon the party seeking relief, in this case the parent. *Schaffer v. Weast*, 546 US 49 (2005). Here, the parent has failed to overcome that burden.

ORDER

It is hereby ordered that the school district implement the recommendations made at the last IEP meeting and the [REDACTED] be placed into Ms. [REDACTED] special education classroom at the [REDACTED] with the exception for the provision of a one-on-one aide as discussed above.

It is further ordered that the IEP team be reconvened within 14 days hereof to implement said program. It is further ordered that the IEP team reconvene within 60 calendar days of replacement into Ms. [REDACTED] special education class to determine whether a transition back to the regular classroom with special education resource services is feasible.

RIGHT TO REQUEST CLARIFICATION

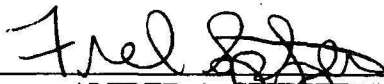
Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned Hearing Officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought and a copy of the request shall be mailed to the party and to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. The right to request such a clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration. **THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION.**

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.01(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to a party.

It is so Ordered.

Dated this January 19, 2008



ALFRED A. SPITZERI
Impartial Due Process Hearing Officer