

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

RECEIVED

APR 16 2008

SPECIAL EDUCATION
SERVICES

[REDACTED])
)
 Student)
 vs.)
 [REDACTED])
)
 Local School District)

Case No. 2008-0046

CAROLYN ANN SMARON, Hearing Officer

DECISION AND ORDER

PROCEDURAL MATTERS

Both parties filed a request for a due process hearing. The school district filed its request on August 13, 2007 when the parents threatened to return the student to his local school, demanding placement in a regular education classroom. The school district asked that the hearing officer clarify the stay-put placement of the student and find that the special education program and related services set forth in the child's Individual Education Plan developed on August 10, 2007 would provide the student with a free appropriate public education in the least restrictive environment.

The parents filed their request on August 15, 2007 demanding a change in placement back to the regular education classroom with resource room support for the 2007-2008 school year. The parents requested a hearing to determine whether or not the school district had provided the student with a free appropriate public education during the 2006-2007 school year (3rd grade) and whether [REDACTED] had provided a free appropriate public education during the 2006-2007 school year and the 2007 Extended School Year after the student's placement was changed mid-grade to a private therapeutic day placement¹. The parents requested a hearing to determine whether the student's continued placement at a therapeutic placement for the 2007-2008 academic year represented an offer of a free appropriate public education when it was made at an IEP meeting held in August 2007. After the student's stay-put placement was clarified as a private day school, the parents placed the student at the [REDACTED] and requested reimbursement for this unilateral placement

¹ The parents stipulated that the Individual Education Plans developed in May 2006 and September 2006 represented an offer of a free appropriate public education.

By letter dated August 16, 2007, CAROLYN ANN SMARON was appointed to serve as the hearing officer for both requests which had been consolidated by the Illinois State Board of Education (ISBE). On August 17, 2007, the hearing officer issued a Scheduling Order and a Notice of Prehearing Conference. Both parties replied to the requests made by the other. A resolution session was held on August 24, 2007 but it was unsuccessful in resolving the dispute.

On August 22, 2007 a Preliminary Order was issued clarifying the "stay-put" placement of the student during the pendency of these proceedings. Both parties provided prehearing conference disclosures. The prehearing conference was held on September 26, 2007 and October 2, 2007. The school district was represented by [REDACTED] and [REDACTED] and [REDACTED] represented the interests of the student.

ISSUES PRESENTED AND REMEDIES REQUESTED²

SCHOOL DISTRICT ISSUE: Acting upon its belief that the parents would present the student for enrollment at a regular education school within the school district, the school district filed a request for due process to clarify the student's placement for the 2007-2008 school year and sought a finding that the special education program and related services set forth in the child's Individual Education Plan developed on August 10, 2007 would provide the student with a free appropriate public education in the least restrictive environment.

SCHOOL DISTRICT REMEDY: An Order finding that the special education program and related services set forth in the child's Individual Education Plan developed on August 10, 2007 provide the student with a free appropriate public education in the least restrictive environment and an Order that the school district implement that Individual Education Plan in a therapeutic day school.

PARENT ISSUE #1: The parents contend that while the Individual Education Plans developed in May, 2006 and September 2006 were calculated to provide a free appropriate public education for the student within the regular education environment, the school district implemented these Individual Education Plan in such a manner as to deny the student a free and appropriate public education. The parents contend that while a functional analysis of the student's behavior and behavior intervention plan were developed, the school district did not appropriately implement the plan. Further, while the parents gave their consent to the placement of the student at [REDACTED] in February, 2007, the parents now contend that the placement was too restrictive and did not meet the needs of the student. In addition, the parents contend that the staff at [REDACTED]

² The Issues and Remedies have been revised from the statement that appeared in the Prehearing Conference Report and more accurately reflect the positions of the parties at the hearing.

██████████ did not implement the student's Individual Education Plan or Behavior Intervention Plan while the student was in attendance at ██████████

PARENT ISSUE #2: The parents allege that the Individual Education Plan developed on August 10, 2007 is deficient in that:

- it contains inadequate or missing statements as to the student's present levels of performance and behavior;
- it contains inadequate or missing goals and objectives;
- the stated goals do not have measurable standards to assess the student's progress,
- without discussion, the Wilson Reading Program, Earobics, and the ALERT self-regulation programs were deleted from the document,
- the issue of related services was not addressed although related services had been included in the last agreed upon Individual Education Plans in 2006,
- the IEP team did not consider evaluations completed in the areas of speech pathology, assistive technology, and occupational therapy
- the IEP team did not consider the report of the student's outside Reading Tutor
- the placement recommended is a more restrictive placement than necessary for this student to make educational progress and that as a consequence of the school district's refusal to allow the student to return to his home school, the parents unilaterally placed the student at a private parochial school.

PARENT REMEDIES REQUESTED

A. A finding that the August 10, 2007 IEP could not provide a free appropriate public education to the student and a finding that the placement selected by the IEP team was too restrictive a placement for this student.

B. An Order that the student's placement be changed to a regular education classroom with resource room support within the school district and an Order that the IEP developed on August 10, 2007 be revised in accordance with the findings and consistent with the evidence and documents introduced at the hearing.

C. An Order that the school district reimburse the parents for the expenses incurred by the parents in their unilateral placement at ██████████

SCHOOL DISTRICT'S RESPONSE: The local school district asserts that the special education needs of the child have been appropriately identified and that the special education program and related services set forth in the child's Individualized

Education Plans created in May 2006, September 2006, February 2007, and August 2007 did provide and will provide the student with a free appropriate public education in the least restrictive environment. With respect to the unilateral placement, the school district denies that the parents are entitled to any reimbursement.

HEARING

The hearing in this matter was initially scheduled for October 24, 2007, October 30, 2007, November 1, 2007, November 9, 2007 and December 3, 2007 from 9:00 a.m. to 3:00 p.m. upon the parent's representation that they had no child care available for the student and his sibling prior to 9:00 a.m. or after 3:00 p.m. At some point during the hearing, the parents agreed to a start time of 8:30 a.m. At some point during the hearing it became apparent that additional hearing days would be required because of the shortened hearing times and the parties agreed upon December 17, 2007 (substitution for November 1, 2007), January 9, 2008, January 28, 2008, February 6, 2008, February 8, 2008, March 5, 2008, March 10, 2008, April 2, 2008 and April 7, 2007 (presentation of closing statements).

The parents had the burden of persuading the hearing officer that the school district did not properly implement the student's Individual Education Plans during 3rd grade (2006-2007) and that the school district did not offer a free appropriate public education in the least restrictive environment for 4th grade (2007-2008). In addition, the parents had the burden of establishing whether or not they are entitled to reimbursement for the expenses incurred in connection with their unilateral placement of the student in a private school.

The school district had the statutory burden to produce evidence that the special education needs of the child were appropriately identified and that the special education program and related services set forth in the child's Individualized Education Plans created in May 2006, September 2006, February 2007, and August 2007 did provide and will provide the student with a free appropriate public education in the least restrictive environment.

FACTS

The parents maintain that the Individual Education Plans developed for this student in Spring 2006 (2nd grade) and Fall 2006 (3rd grade) were calculated to provide the student with a free appropriate public education with placement in a regular education 3rd grade classroom with resource room support from a special education teacher and related services in the areas of occupational therapy and speech/language (the parents declined services in the area of social work). On a going-forward basis, the student was identified as having a learning disability.

In order to understand the position of the parents and the school district, the hearing officer asked for and received historical documents for the student. The student's progress or lack thereof prior to 3rd grade at [REDACTED] and the appropriateness of the student's three-year evaluation in Spring 2004 are not before this hearing officer. These facts are recited here to provide a historical context for what transpired in 3rd grade.

**REEVALAUTION IN JUNE 2004
(END OF KINDERGARTEN)**

A private speech and language evaluation was secured by the parents. That speech pathologist concluded that the student's articulation, receptive language and expressive language were within the average range for his age and that auditory processing was not a concern. That private evaluation appeared consistent with the evaluation conducted by the school district speech language pathologist.

A private neuropsychological evaluation was secured by the parents. At that time, the student was 5 years 10 months of age. Dr. [REDACTED] was asked to assess the degree of the student's Attention Deficit Hyperactivity Disorder as well as the student's academic progress. The psychologist assessed the student's intelligence using the Stanford-Binet Intelligence Scale: Fourth Edition and concluded the student demonstrated high average/bright verbal cognitive abilities and his expressive vocabulary and common sense verbal judgments were accelerated. The psychologist concluded that the student had high average verbal reasoning and average abilities in terms of abstract/visual reasoning, quantitative reasoning and short term memory. She concluded that the student had average visual motor skills and his basic math and reading skills were at grade level, noting a mild weakness in auditory sequencing. Dr. [REDACTED] concluded that in the area of achievement the student was on target and ready for a first grade curriculum. Dr. [REDACTED] recommended continued medical intervention for the student's ADHD and continuation of special education services in first grade with the aid of learning disability resource services "due to auditory sequential processing deficit" based on her finding that while the student's short-term memory was in the average range, she noted a relative weakness ranging from 4 year 11 month age range to 5 year 5 month. It should be noted that Dr. [REDACTED] found no evidence of a learning disability. Both the private psychologist and the school psychologist noted that the student's test-taking behavior was at times impulsive and fidgety.

For reasons not apparent from a review of the IEP, the IEP team concluded that the student had a learning disability asserting that there was a significant discrepancy between his ability and achievement in the areas of oral expression, written expression, basic reading skills and math calculation. For reasons not apparent from a review of the IEP, the IEP team concluded that the student had a processing deficit in the area of attention, memory, and conceptualization/language. The team noted that the student had

difficulties with attention/concentration, following directions and memory and concluded that the foregoing behaviors often interfered with consistent daily performance.

The IEP team concluded that the student should be placed in a regular education 1st grade classroom with in-class and pull-out support from a special education teacher in the amount of 265 minutes/week and related services in the areas of occupational therapy, speech/language and physical therapy.

2004-2005 SCHOOL YEAR (FIRST GRADE)

By November 2004 the parents were requesting additional testing and an increase in the occupational therapy minutes. The parents were now asserting that the student had a “language based disorder” and requested a “complete evaluation for language based disorder by a qualified evaluator”. The parents signed a Consent for Evaluation on November 15, 2004. The parents requested that the school district administer the Wechsler Individual Achievement Test (WIAT) The student’s scores were as follows:

	Standard Score
Word Reading	99
Reading Comprehension	88
Math Operations	105
Math Reasoning	104
Spelling	106
Listening Comprehension	112

The school psychologist reported that the student performed well on the presented listening activities. His score of 112 was considered within the high average range. He reported that while the student “may often become distracted within his classroom but the presented listening activities were presented individually and in a quiet straightforward setting”.

The special education teacher, [REDACTED] utilized the Woodcock-Johnson III Test of Achievement. The student’s scores were as follows:

	Standard Score
Oral language	100
understanding directions	100
story recall	99
Broad Reading	99
letter/word identification	107
reading fluency	
passage comprehension	100
Broad Math	114

calculation	127
math fluency	98
Broad Written Language	105
spelling	110
writing fluency	
writing samples	111
Academic Skills	114
applied problems	100
Academic Fluency	83
story recall-delayed	83
writing fluency	
reading fluency	
Academic Applications	102
TOTAL ACHIEVEMENT	105

In the opinion of the special education teacher, the student experienced the most difficulty on tasks marked fluency. She did not report scores in those areas as the raw scores were too low. She concluded that while the results suggested that the student was starting to building his repertoire of skills, the skills of long term recall and speed in completing work were definite weaknesses. She recommended accommodations to address these weaknesses e.g. reducing the quantity of items to be completed on assignments.

On January 27, 2005 an IEP was developed that continued the student's placement in a regular education 1st grade with in-class and pull-out support from a special education teacher but the minutes were increased to 300 minutes per week and related services in the areas of occupational therapy and speech/language. The student was also to be provided with a 1:1 aide. While the parents were in attendance at this meeting, they refused to consent to the change in services.

On February 4, 2005 an IEP meeting was held to discuss the parents questions about the evaluations presented on January 27, 2005. At that meeting, the parents notified the school district that they had had the student independently evaluated by Dr. [REDACTED] and apparently presented that report to the school district at that meeting. Dr. [REDACTED] had conducted a neuropsychological evaluation of the student premised upon parent reports that the student was having difficulty learning to read and was having some memory difficulties. It would appear from a review of Dr. [REDACTED]'s report dated January 7, 2005 that he was provided with the earlier independent neuropsychological evaluation as he specifically mentioned those findings. Dr. [REDACTED] noted that the student had a complex developmental history as a foreign adoptee and had been diagnosed with various disorders that included Attention Deficit Hyperactivity Disorder and Generalized Anxiety Disorder. Dr. [REDACTED] concluded that the student's test performances indicated that he had average verbal and nonverbal intellectual abilities, with his nonverbal abilities being somewhat stronger than his verbal abilities. He found that the student's academic skills in the areas of basic work reading, spelling and math were at a level that would be

expected based on his level of intelligence, particularly his verbal intelligence. Within that context, he found that the student displayed weaknesses in his ability to utilize phonetic decoding skills for reading and in his reading comprehension. Taken together, Dr. [REDACTED] was of the opinion that the foregoing findings were consistent with a diagnosis of Reading Disorder.

More interesting, in light of the events which took place in 3rd grade, Dr. [REDACTED] concluded that the student's test performance, test-taking behavior and the behavior reported to him by the parents (but not noted by his 1st grade teacher) reflected problems in inhibition and executive functioning that are characteristic of ADHD.

Dr. [REDACTED] noted that the student's 1st grade teacher's responses on behavioral questionnaires indicated that she observed significant problems related to anxiety. Dr. [REDACTED] commented that these problems were consistent with the student's diagnosis of Generalized Anxiety Disorder and the long-standing problems observed by the student's parents in his ability to adapt and cope with emotional stressors at home. Dr. [REDACTED] observed that the fact that the student's teacher was observing clinically significant problems related to anxiety suggesting that evidence of the student's emotional adjustment difficulties were no longer confined just to his home. Clearly prescient, Dr. [REDACTED] observed that as the student was faced with increased educational, social and emotional challenges of school, his underlying adjustment difficulties might become more difficult for him to contain.

Dr. [REDACTED] made certain recommendations.

1. continuation of psychiatric consultations to address treatment of problems related to ADHD and General Anxiety Disorder
2. within the context of special education, resource services on a daily basis to address development of his skills in the areas of phonological awareness, phonological memory and rapid naming.
3. within the context of special education, continuance of speech/language and occupational therapy services focusing on weaknesses in pragmatic communication, sequencing, working memory, organization, planning, attention to detail and sensory integration and modulation. Dr. [REDACTED] specifically mentioned "How Does Your Engine Run" for occupational therapy.
4. within the context of special education, individual and group oriented services to address development of the student's social skills and his emotional coping skills.
5. accommodations and modifications of his educational program to address the student's ADHD
6. frequent communication among educators, private therapy providers and parents
7. private speech/language and occupational therapy and tutoring

Ms. [REDACTED] testified that she had reviewed Dr. [REDACTED] report and recalled that some but not all of Dr. [REDACTED] recommendation were included within the student's IEP.

Progress on existing goals was discussed and new annual goals with quarterly benchmarks were developed for the remainder of 1st grade and the first semester of 2nd grade. There was some mention of a private speech language evaluation in June 2004 but that report was not attached to any of the documents provided by the parties. The plan

for the student remained unchanged i.e. placement in a regular education 1st grade with in-class and pull-out support from a special education teacher for 300 minutes per week and related services in the areas of occupational therapy and speech/language. While recommended by Dr. [REDACTED] the parents declined the specific occupational therapy program "How Does Your Engine Run" and declined any school-based social-work services.

It appears from the February 5, 2005 IEP that the IEP participants were told that the parents had secured an evaluation of the student's central auditory processing. On April 8, 2005, the IEP team reconvened, ostensibly to consider the auditory processing evaluation completed by Dr. [REDACTED]. The stated purpose for the meeting was as follows:

The purpose of the meeting is to discuss appropriateness of the current reading program [REDACTED] is currently using versus other multi-sensory programs parents have suggested, like Lindamood Bell. In addition, to this we will be discussing several items parents have asked the team to address including ESY, OT and sensory diet information. Please see the attached agenda for a complete list of the items to be addressed.

Dr. [REDACTED] concluded that the student's integration skills appeared underdeveloped for his age ("evidence of delayed auditory integration skills"), placing the student at risk for meeting the listening, speaking and writing demands of an elementary school environment without continued intervention. Dr. [REDACTED] made specific recommendations for environmental modifications including the avoidance of timed examinations. Dr. [REDACTED] did not diagnose a central auditory processing disorder or a central auditory processing deficit.

Given the events of 3rd grade, it was interesting to note that Dr. [REDACTED] recommended avoidance of classroom settings that are noisy or reverberant because students with processing deficits are often bothered by noise at levels that other listeners would not find different.

No agenda was attached to the IEP but voluminous notes were made and attached. [REDACTED] the student's special education teacher, recalled that the team accepted Dr. [REDACTED] recommendation that the student no longer receive timed tests. This was the first meeting attended by [REDACTED] the private reading tutor for the student. Ms. [REDACTED] and the parents questioned the appropriateness of the school district's reading program (Open Court Reading) asserting that the program was not intense enough for the student. They demanded that the student receive Wilson Reading for 90 minutes/week over three 30 minute intervals. The IEP team agreed to use a multi-sensory approach in conjunction with Open Court Reading. Specifically, the Wilson Language Program for the student's age and growth level would be used (Foundations).

At that meeting, the parents requested an assistive technology evaluation but none of the educators working with the student believed that such an evaluation was necessary. The parents also requested Extended School Year services, asserting that the student regresses over the summer. Again, none of the educators working with the student believed that the student met the regression/recoupment requirements for Extended School Year services. Nonetheless the educators believed that the student could benefit from the Title Program in reading and math over the summer and agreed to enroll the student, accompanied by an 1:1 aide. No direct occupational therapy was provided over the summer.

2005-2006 SCHOOL YEAR (SECOND GRADE)

██████████ the student's 2nd grade teacher, was called by the parents in support of their assertion that the IEP meetings in Spring 2006 were collegial in nature and resulted in an IEP that offered the student a free appropriate public education in the least restrictive environment i.e. placement in a regular education 3rd grade classroom with resource room support. The testimony of the various school district participants is not consistent with collegiality.

Ms. ██████████ testified that she has taught severe and profound special education students but for the last twenty-four years has taught 2nd grade. Ms. ██████████ testified that there were 17 students in her 2nd grade classroom during the 2005-2006 academic year. She was familiar with the student, having seen him in the hallways at school. Ms. ██████████ recalled that the student was receiving the Foundation program during his resource period. She was asked to compare his ITBS scores for 1st and 2nd grade and she testified that the student showed good improvement during 2nd grade i.e. his vocabulary and comprehension increased. She attributed his significant progress to the student being developmentally more ready to read, the student receiving resource support using Foundation, and the student's participation in her classroom in small guided reading groups. Ms. ██████████ testified that when the student was defiant in her classroom, she and the student's 1:1 aide could usually redirect the student. Ms. ██████████ testified that the student would become defiant when the classwork involved writing, when the student believed that the classwork was too hard for him, when the student was overwhelmed by the classwork, or at the end of the day.

On cross examination, Ms. ██████████ testified that when the student became defiant he would refuse to do his classwork, crumple up paper and throw it in the basket or become loud. She recalled that when the student's actions became disruptive to the other students, his 1:1 aide would remove him from the classroom. She recalled that the student was more defiant with his 1:1 aide. She recalled that at first the student had difficulty transitioning from school to home but that the resource teacher, ██████████ created a plan which the student accepted and the transition problem was solved. Ms. ██████████ testified that while she was trying to develop this plan, the parents would bring

her communications to their outside providers and then return to her with accusatory communications e.g. what did you do, did you ask for help.

Ms. [REDACTED] recalled that the parents made demands upon her that were difficult, demands that required that she leave the students in her classroom to attend to the needs of this student. She recalled that there was less support for the student's special education teacher, [REDACTED] whose credentials and ability to address the needs of the student were constantly questioned by the parents. Ms. [REDACTED] testified that she wished that there had been more trust on the part of the parents, that the parents appeared not to trust the teaching staff who worked with the student on a regular basis, that the parents appeared not to trust the educators to do the right thing. She recalled that things would be going well and then they would change. Ms. [REDACTED] recalled that there seemed to be a connection between the student's behavior and the parent's satisfaction with his teachers e.g. there were times when the student would state that "this is stupid, my mom says that this is stupid". She testified that the student would say things that led her to conclude that the student's parents did not care for or trust her or the resource teacher or the aide. In conclusion, Ms. [REDACTED] testified that the student's behavior in her classroom was not typical behavior for a 2nd grade student.

The parents called [REDACTED], the student's 2nd grade art teacher, [REDACTED] the student's 2nd grade social studies teacher, and [REDACTED] the student's 2nd grade physical education teacher. None of them provided any testimony relevant to the issues raised by the parents. None of them experienced any instances of defiance that they could not manage themselves. All reported that the student was cooperative and mostly compliant.

At the request of the school district [REDACTED] testified in detail about her experience as the student's resource teacher in 2nd grade during the 2005-2006 academic year. Ms. [REDACTED] has an undergraduate degree in special education and a masters degree in social/emotional/behavior disorders. She has been trained as an instructor in Wilson Reading. She had worked for the special education cooperative in the severely developmentally delayed classroom and has been employed as a resource teacher for the school district for six years.

She started working with the student on a 1:1 basis at the insistence of the parents although there was nothing in the student's IEP requiring this level of service. Ms. [REDACTED] worked with the student for 60 minutes/day from Monday through Thursday and 60 minutes/Friday, allocated 30 minutes in the morning and 30 minutes in the afternoon. Then the parents requested that she work with the student in the classroom at a table in back where she could re-teach the student. Thus she worked with the student on a pull-out and push-in basis. She characterized the demands of the parents as excessive. She testified that it was common for the parents to email various members of the team information but the "slant" of the emails was not always the same. Ms. [REDACTED] testified that when the parents demanded specific teaching strategies and the exclusion of other

strategies, the student would often stop working. She testified that the parent's micro-managed the rewards to be provided to the student. As a consequence, there were very few extrinsic motivators available to her or the classroom teacher or the aide. Ms. [REDACTED] testified that she often felt that the student's parents were in control of her work with the student. While Ms. [REDACTED] would take her some of her concerns to other members of the IEP team, in most cases she often just acquiesced. Ms. [REDACTED] testified that she often felt backed into a corner by the actions of the parents.

She recalled the discussions at the IEP meetings during 1st grade. She recalled that the IEP team had investigated the Lindamood Bell program but decided that the setting was too restrictive. She recalled the discussion surrounding Wilson Reading and Foundations. She recalled that the IEP team considered both programs but determined that Foundations was an off-shoot of Wilson and could be delivered in 25-30 minutes/session during 2nd grade. She recalled that Foundations was a systematic and sequential approach to decoding. She testified that Foundations was not meant to be a substitute for a core language arts curriculum, that it was meant to be done in tandem with a literature based approach. Ms. [REDACTED] testified that while the core curriculum in reading was working for the student and was appropriate for the student, the student was still not as far along as he should have been after 1st grade. She recalled that the parents were insistent that she use Foundations in 2nd grade which she started in October 2005. She testified that she read the manual for Foundations and based on her experience in other reading programs, was able to deliver the program.

In a report dated March 1, 2006 Ms. [REDACTED] provided a summary of the student's progress during 2nd grade and reported on the student's progress on improving reading fluency skills, improving reading comprehension skills, improving auditory memory skills and improving basic math skills. Based on her work with the student she reported that the student had met his IEP goals and had made significant progress in the areas of decoding and comprehension. Ms. [REDACTED] reported that she was familiar with the school district's language arts program i.e. Open Court Reading, which focused on phonemic awareness, which is at the core of the Wilson Reading program. In addition to Open Court, the school district continues to use a guided reading program where students are broken up into smaller groups based on their beginning performance on the Diagnostic Reading Assessment (DRA). She recalled that the student was in resource room with her during the language arts instruction in 2nd grade and thus was not exposed to the language arts curriculum in his 2nd grade classroom.

Ms. [REDACTED] administered the DRA to the student in February 2006. She recalled that the student was a full year behind his peers at the beginning of 1st grade (Level 6) although he was by no means the only child that far behind. By February 2006 the student was at the beginning 2nd grade level (Level 16), indicative of phenomenal progress. At the hearing she testified that the student had reached Level 20 on the DRA.

During 2nd grade she received multiple daily communications from the mother via email, communication notebook, telephone, face-to-face meetings, IEP conferences. At some point the volume of the communications became so large that her building principal [REDACTED] directed her to respond once a week and then only to the communications that seemed to be of the greatest priority. She testified that the mother of the student would just appear in her classroom after school, entering the building via an unlocked back door. The meetings with the mother were usually about something that the mother considered of an emergency nature and she would demand an immediate response. The building principal secured the back door and changed the procedure so that the parents had to make appointments to see school staff.

Ms. [REDACTED] testified that the student does best when he is working in a small group environment and likes to take frequent breaks while working. She recalled that once the student grasps the material, he retains the material. At the beginning of 2nd grade, the student's noncompliant behavior could be managed by her. She recalled parental restrictions about the method of rewarding the student for good behavior, parental objections to the type of rewards, parental restrictions on praising the student. Ms. [REDACTED] testified that the frequency of the demands for changes in what she was doing in the classroom were constant and she never believed that any behavior modification plan was given a chance.

She testified that the student completed Lesson 10 in Foundations and the IEP goals reflected completion of Lesson 14 in October 2006. In the opinion of Ms. [REDACTED] she believed that the student was ready to rejoin the regular classroom language arts instruction in 3rd grade and had no need for Foundations or the Wilson Reading Program. She testified that the student fit into the range of students that would be entering 3rd grade and she prepared goals which reflected a quarterly benchmark of DRA Level 24 by November 2006 and DRA Level 28 by February 2007, with DRA Level 28 representing the 3rd grade reading level.

March 1, 2006 was the first of several IEP meetings to discuss the student's progress in 2nd grade. The mother of the student attended this meeting, accompanied by the student's private tutor, [REDACTED]. Ms. [REDACTED] provided her report on the student's progress and was responsible for the creation of an agenda for the IEP meetings. She testified that there were four IEP meetings – March 1, 2006, April 8, 2006, April 17, 2006 and May 19, 2006 – required to complete the student's IEP for 3rd grade. At the hearing Ms. [REDACTED] testified that the student's ability in reading depended on his compliance with her directives. Ms. [REDACTED] testified that the student's behavior became less compliant in February 2006 and March 2006 - the time of the IEP meetings. She recalled that the student would just sit and refuse to do anything. She observed that when there were IEP meetings where there were differences of opinion between the educators and the student's

[REDACTED] testified at the hearing. She is the students' 1:1 reading tutor. Her testimony regarding her success in a quiet 1:1 setting are interesting but not relevant to the issues raised in this hearing.

mother, the student's behavior would deteriorate. She recalled that the student asked her why his parents hated her.

Ms. [REDACTED] recalled that the IEP team discussed the student's academic performance and behavior in Ms. [REDACTED] 2nd grade classroom. She recalled that there was a long conversation about the private occupational therapist and her use of a revised version of a particular program to regulate the student's behavior. She recalled that the school district wanted to coordinate with the private occupational therapist but the parents never authorized the coordination. She recalled that she had no approval to speak with the student's private providers although the parents occasionally solicited information from her for the outside providers. Ms. [REDACTED] also testified that there was a long discussion about the amount of support required by the student. Ms. [REDACTED] testified that she did not believe that the student required the amount of support that the parents were requesting during the Spring 2006 series of IEP meetings.

At the end of 2nd grade, Ms. [REDACTED] asked to be removed as a resource teacher for the 3rd grade special education students, finding that it was hard to satiate the requests from the student's parents during 2nd grade. She testified that while she had seen children with behavior similar to that of the student, it was cumbersome to work with parents who constantly questioned her professionalism, demanded that she check in constantly with the other school district employees working with the student, and in general constantly questioned her and demanding changes on a frequent basis. Ms. [REDACTED] testified that the parents demanded that the IEP team meet on a weekly basis to coordinate the student's instruction but then the parents questioned whether the meetings were in fact happening. When offered an opportunity to attend these weekly meetings, Ms. [REDACTED] recalled that the parents declined.

She recalled that she provided the Foundations materials kit to the staff working with the student in 3rd grade but it was her understanding that Foundations was not continued in 3rd grade. Instead, it was her understanding that the school district acquiesced to the parent's demand that the resource teacher use the Wilson Reading program. In that regard, she was able to support the 3rd grade resource teacher based on her training and use of the Wilson Reading program.

The parents testified that they attended the Spring 2006 IEP meetings. While the parents asserted in their testimony that they were motivated by concern for their son, it was clear from their testimony (and the testimony of school district personnel) that the parents were also there to question the professional credentials of the teaching staff, question the methodology utilized by the teaching staff, question the nature and frequency of communications from the teaching staff and continue their critique of the school district's language arts program, asserting the superiority of the Wilson Reading system and its appropriateness for the student. School district personnel testified that the parents and their educational advocates were disrespectful and demeaning, requiring the continued attendance of school district counsel at these IEP meetings.

Dr. [REDACTED] attended the May 17, 2006 IEP meeting at the request of the parents, ostensibly to weigh in on the appropriateness of learning cursive for a student with a diagnosed Anxiety Disorder. Dr. [REDACTED] testified that she has a doctorate in clinical psychology and had been working privately with the parents and the student for the past five years, focusing her attentions on the student's behavior. In her opinion the student suffered from developmental and learning issues arising out of his adoption at the age of 2 ½ years from a foreign orphanage. In her opinion the student has underlying social deficits, secondary to early deprivation and the significant trauma associated with early abuse, creating an attachment disorder. She offered her opinion that the student not be required to learn cursive in light of his anxiety issues and the social and academic demands of 3rd grade. Dr. [REDACTED] testified that she had never observed the student at school and had no direct knowledge as to the interaction of the student with his aide, resource teacher and classroom teacher. Dr. [REDACTED] was of the opinion that the student requires a quiet environment with low amounts of extraneous and ambient noise because he is highly distractible. Dr. [REDACTED] testified that the student requires structure and consistency and has a hard time managing surprise. Dr. [REDACTED] testimony supported the school district's conclusion in August 2007 that the student's appropriate placement was a therapeutic environment.

[REDACTED] testified she is the student's private occupational therapist. She works with the student at her clinic once a week for 45 minutes. She testified that the mother of the student is always in the room. She testified that she is unfamiliar with the activities of the school district occupational therapist although she recalled that she had discussed the Alert program as modified by her with [REDACTED] the school district occupational therapist. She testified that she has never observed the student in his classroom. The testimony was not relevant to the issues raised in this hearing.

By the end of the Spring 2006 IEP meetings, goals had been developed in the areas of written language, spelling, mathematics, literacy skills (DRA level), reading fluency (Foundation goal through October 2006), occupational therapy, and speech/language. The team concluded that the student should receive 300 minutes of resource room support in a pull-out/push in manner, consult services in occupational therapy and direct service in speech/language. The team concluded that the student did not require an assistive technology evaluation and was not eligible for extended school year services. The discussion regarding the student's behavior was tabled until 3rd grade.

2006-2007 SCHOOL YEAR (THIRD GRADE)

School started and the parents were quickly requesting that an IEP meeting be held. [REDACTED] the new Director of Special Education, elected to convene a meeting on September 13, 2006. Believing that she could control the rancor from the previous year's meetings, Ms. [REDACTED] did not invite school district counsel.

Dr. [REDACTED] testified that she was the newly appointed Director of Special Education for the school district. Previously she had been the support service chair for another high school district. She had been a special education teacher with experience in a variety of special education settings. She maintains her certifications as a special education and regular education teacher. Her first day on the job was July 1, 2006, after the 2nd grade IEP meetings. She was aware of the history of contentious and adversarial relationship with the parents and the presence of the school district attorney at the IEP meetings. She had had conversations with the former director of special education, [REDACTED] and Ms. [REDACTED]. She was looking forward to being a “peace maker” and to that end, met with the mother of the student during summer 2006. She acquiesced in the parent’s demand that the school district attorney not attend the next IEP meeting.

The parents had already met with the student’s special education teacher and continued in their advocacy for the Wilson Reading Program. The IEP was revised to reflect that the student would receive 450 minutes/week of pull-out services from the special education teacher. The participants began the postponed discussion of the student’s behavior. The notes from the September 13, 2006 contain the following statements:

Team discussed moving into Wilson program for [REDACTED] at this time and deleting Foundations Program. [REDACTED] will need to get the training and begin delivering instruction in Reading. Team will reconvene to discuss the training and implementation of Wilson program.

Team discussed emotional/behavioral issues that [REDACTED] is displaying. Team discussed OHI eligibility. Team discussed Functional Analysis and Behavior Intervention program. [REDACTED] suggested getting a clear picture of current behaviors... [REDACTED] will look at gathering baseline data for one week.

None of the student’s goals were revised to add a specific requirement for the Wilson Reading Program. Ms. [REDACTED] reversed the earlier IEP team decision and agreed to conduct an assistive technology evaluation. The mother of the student testified that she found the tenor and tone of the meeting to be very upbeat and collegial, contrasted with the meetings in 2nd grade.

Ms. [REDACTED] apparently observed the student during the week of September 18, 2006 and noted that the student exhibited work refusal during three key periods – at the beginning of the school day, during his mid-morning resource period with his special education teacher and after lunch during math class.

Dr. [REDACTED] attended the IEP meeting on September 13, 2006. She recalled that the school district personnel were stressed and tense. She recalled that the mother of the student and her advocate, [REDACTED], seemed to view the meeting as an opportunity to question the professionalism of the school district staff and question their ability to meet the student’s

needs. The student's special education teacher, [REDACTED] attended the meeting. She recalled that the mother and Ms. [REDACTED] arrived with a typewritten agenda and apparently believed that all items on their agenda should be addressed at the meeting. She recalled that the student's 3rd grade teacher, gave her report of the student's progress thus far. She recalled the decision to have the [REDACTED] psychologist, [REDACTED] conduct a baseline reading assessment and the student's special education teacher would continue this assessment on a bi-weekly basis. She recalled that the basis for the psychologist conducting a baseline reading assessment was the student's previous behavior and his current behavior in 3rd grade. At that point, the student was already exhibiting work refusal, work initiation.

She recalled that there had been a cursive writing goal written for 3rd grade but implementation was deferred at parents request to this meeting. She recalled that school district occupational therapist believed that the student was ready for cursive writing. She recalled that the parents had advised the IEP team that a private assistive technology evaluation was pending. Dr. [REDACTED] recalled that the parents demanded that the student's special education teacher cease any activities in the Foundation program and immediately implement Wilson Reading. Dr. [REDACTED] recalled that the student's special education teacher had not received any training in Wilson Reading.

Dr. [REDACTED] recalled a meeting with the mother a week later. She recalled that the mother had many questions and comments. She recalled that the mother grabbed the IEP created on September 13, 2006 and on the last page in the space marked "Other Considerations", the mother wrote "FBA, OT: ENGINE RUN, SW-EVAL" on the paper. Dr. [REDACTED] recalled that after the IEP meeting, the parents presented a document entitled "Prior Written Notice Items to be added to the IEP". Upon reviewing the document, Ms. [REDACTED] testified that it was not an accurate representation of the topics discussed or the agreements made. Subsequent to these activities, Dr. [REDACTED] made the decision that the school district attorney need to attend IEP meetings for this student. Dr. [REDACTED] recalled that she had discussed [REDACTED] with the parents as she believed that it might be a better option for the student. The parents signed a confidential information release after the IEP meeting. Subsequent thereto, the parents dismissed the option of [REDACTED] as it was "too far away".

Dr. [REDACTED] testified that [REDACTED] resigned from her position as the 3rd grade special education teacher on September 24, 2006. While the school district searched for a substitute, Dr. [REDACTED] would sometimes act as the student's special education teacher. This arrangement lasted until November 2006 when the parents, via email, advised Dr. [REDACTED] that she was to no longer speak to the student and no longer work with the student in the morning. Dr. [REDACTED] testified that the mother of the student seemed to change her view of her when she started to provide answers to questions that the mother of the student did not want to accept. Dr. [REDACTED] testified that she recalled disrespectful and contentious telephone conversations with the mother including statements that the mother was tape-recording the conversations. At that point, Dr. [REDACTED] communicated exclusively via email

with the mother of the student. The mother's response to this new arrangement was to attempt to communicate with the building principal, [REDACTED]. Ms. [REDACTED] would then forward the mother's emails to her. By November 7, 2007 the mother of the student was demanding the qualifications of the student's resource room teacher and questioning the qualifications of the student's 1:1 aide.

After the demise of Dr. [REDACTED] services, the school district utilized the services of a short-term substitute teacher until the school district arranged for a special education teacher from another building to provide services to the student. [REDACTED] testified that she is the special education resource room teacher at another elementary school in the district. She has been employed by the school district for 12-13 years. Her usual case load is 4 students, mostly providing pull-out services. Ms. [REDACTED] testified that she worked with the student from the beginning October 2006 through the first week in November 2006. She recalled that at first the student was attentive as she reviewed old concepts to determine his instructional level in Wilson Reading. As time went on, she recalled that it became more of a struggle – the student would ask if she was going to “make” him do something. In her opinion, the student's behavior interfered with her ability to work with the student. However she was able to manage his work refusals.

When [REDACTED] returned to her building, the school district hired a long term substitute teacher. After 2-3 weeks, that substitute resigned. After that, the district was able to employ [REDACTED] as a permanent long-term substitute special education teacher for the remainder of the school year. Dr. [REDACTED] testified that none of the individuals who resigned from their position as 3rd grade special education teacher were asked to resign, that there were no complaints by any staff members regarding their performance, and that the building principal had expressed no criticisms about their performance.

Dr. [REDACTED] testified that [REDACTED] started right after Thanksgiving 2006 and was supervised at first by [REDACTED] in the implementation of Wilson Reading. By December 19, 2006 the mother contacted the school district, via email, outlining her complaints. In this email, the mother, while conceding that her son's recall of events was less than perfect, would then use her son's recall as the basis for her demands that the aide be replaced, that the special education teacher be trained in how to instruct the student, and her complaint about the classroom teacher's lack of response to an email about a spelling test. By email dated January 17, 2007 the mother of the student was demanding that the student's classroom be changed as she was apparently no longer pleased with the regular education classroom teacher either.

Meanwhile the school district was attempting to complete a functional analysis of the student's behavior. Dr. [REDACTED] testified that she was frustrated with the delay in completing this task, a delay she attributed to securing parental permission for implementation of the plan. She testified that the student's inappropriate behaviors seemed to escalate during Fall 2006 – more off-task, more work refusal.

By February 4, 2007, Dr. [REDACTED] testified that the relationship with the parents was very difficult. As the mother continued her demands that the child's regular education teacher, special education teacher and 1:1 be replaced, the student's behavior in the classroom escalated. There were multiple incidents of "shut down", refusal to complete work, physical aggression and the staff was concerned. Dr. [REDACTED] testified that the student seemed unhappy, overwhelmed and agitated. Dr. [REDACTED] recalled that she had been called in for crisis management 3-4 times in the month of January 2007. Dr. [REDACTED] advised the mother that there would be no transfer to another school in the district.

As the mother's complaints escalated, the student's behavior escalated and it appeared to Dr. [REDACTED] that the student was the "man in the middle", caught between his mother and his teachers. By February 7, 2007 the mother was alleging that the student was afraid of his resource teacher and his 1:1 aide and was not in a safe environment. The mother alleged that the student's regular education teacher, special education teacher and 1:1 aide were threatening the student.

Dr. [REDACTED] testified that the assistive technology evaluation was completed in February 2007 but the evaluation itself was never discussed at any IEP meeting thereafter as the IEP team was focused on the student's behavior.

From September 13, 2006 through February 9, 2007 there were no IEP meetings. On February 9, 2007 the IEP team reconvened at the request of the parents.

- [REDACTED] distributed the draft of the Functional Analysis of the student's behavior and a proposed Behavior Intervention Plan.
- Dr. [REDACTED] attended the meeting. As the parent's educational consultant, she opined that the behavior intervention plan was a good place to start but that the parties still seemed at odds as to the meaning of the student's behaviors. Presumably as the student's psychologist, she testified that the student's anxiety disorder made it very difficult for him to regulate his emotions. Dr. [REDACTED] recommended predictability, scheduled breaks, repetition and sensory breaks.

Dr. [REDACTED] testified that she attended the IEP meeting on February 9, 2007 accompanied by the school district attorney. She believed that the IEP team would be discussing the behavior data and revising the IEP to include a behavior management plan. There was much discussion about tokens in the behavior plan with the mother demanding that the 1:1 aide not be permitted to give tokens to the student. The IEP team did not support this demand. Dr. [REDACTED] recalled that she had observed the student with his aide and testified that the student was very disrespectful to the 1:1 aide.

Dr. [REDACTED] testified that she attended the IEP meeting on February 15, 2007 accompanied by the school district attorney. At this point she recalled the parents demanding a transfer to [REDACTED] and asking if she would need an attorney to accomplish that change

in placement. At this point, Dr. [REDACTED] was aware that the student was openly defiant e.g. you're not doing Wilson right, my mom is going to have you fired. Dr. [REDACTED] believed that the student's behavior mirrored the parent's dissatisfactions.

At the IEP meeting on February 15, 2007 [REDACTED] the regular education 3rd grade teacher provided an academic update over the objection of the mother of the student. Apparently the regular education teacher had refused to meet with the parents at an evening parent-teacher conference, preferring to provide her update at the IEP meeting. Ms. [REDACTED]'s report was filled with statements about work refusal and refusal to complete work.

[REDACTED] provided an update regarding her activities as the student's special education teacher. Despite the parent's insistence that Wilson Reading be employed, the student himself was refusing to participate accompanied by statements like "you don't know what you are doing".

On February 16, 2007 the IEP team reconvened. The student's special education teacher prepared an academic update. She reported that the student refused to work with her on the Wilson Reading, accompanied by statements like this: "you don't know what you are doing". She considered statements like that to be very unusual for a 3rd grade student. They more likely are the opinions of a person the student trusts and respects and he repeats them at school.

Dr. [REDACTED] testified that the meeting on February 15, 2007 was stressful, tense, negative, with accusatory and insulting comments made by the parents. When attacking the credentials of the 1:1 aide, the parents stated "paraprofessional – not quite professional". She recalled that the staff was appalled by the statements made by the parents. Dr. [REDACTED] recalled that the school district again offered social work services but those services were declined, accompanied by derogatory statements about social workers in general. The meeting lasting over three hours.

The student's 3rd grade teacher reported on the student's academic progress or lack thereof in her classroom. Although the student has been provided with a modified spelling list, he refused to start, finish or retake tests. The student refused to start almost all writing assignments and has trouble finishing them.

At this meeting the student's special education minutes were increased to 485 minutes/week with services delivered in the regular education classroom and as pull out direct services in the resource room. There was much discussion of the student's performance in Wilson Reading and the DRA. The parents reported that the student was unhappy with his classroom teacher, teacher aide and special education teacher. The parents demanded that the student's placement be changed to [REDACTED] where he could receive Wilson Reading. The parents rejected a return to the student's special education teacher in kindergarten through 2nd grade ostensibly because Ms. [REDACTED]

already had a full case load. ██████████ testified that if the student had been returned to her case load in February 2007, she would have tendered her resignation effective with the end of the 2006-2007 school year. The parents rejected a transfer of the student to a resource teacher at another school who had worked with the student on a temporary basis earlier in the year, ostensibly for the same reason.

On February 26, 2007 the IEP team reconvened, apparently for the sole purpose of confirming a change in placement to a therapeutic day placement in general and ██████████ in particular. The student started at ██████████ on February 27, 2007. The IEP contains the following statement:

District will transfer the file and responsibilities for data collection and implementation of the Behavior Intervention Plan to ██████████

It is clear from subsequent events that ██████████ viewed the Behavior Intervention Plan as a draft which would guide them in addressing any undesirable behavior on the part of the student.

Dr. ██████████ testified that she attended the IEP meeting on February 26, 2007. The meeting was held for the purpose of changing the student's placement to a private day school from February 26, 2007 through February 26, 2008. A statement was inserted within the IEP indicating that the school district was acquiescing to the parents demand for a new placement. The IEP contains notations that the student's placement will be changed so that he can receive 60 minutes/day of Wilson Reading. Dr. ██████████ recalled that the meeting was tense but short. Dr. ██████████ also testified that the participants discussed the Behavior Intervention Plan with school district personnel indicating that the parents had already started to object to the reinforcements being used so the behavior plan was again on hold due to parental objections.

The parents called ██████████, a pediatric nurse practitioner, who testified for a full day concerning her beliefs regarding the student's needs and placement. She attended the IEP meetings in September 2006, February 2007 and August 2007. Ms. ██████████ has not provided any direct service to the student and has never observed the student at ██████████. In reviewing her testimony, it was duplicative of the parent's position in this case.

██████████ testified that she was the student's 3rd grade regular education teacher. She has been employed by the school district for ten years. She has special education students in her classroom and she works closely with the student's resource teachers about strategies for the students to be successful. She had 19 students in her classroom during the 2006-2007 school year. The students receive all instruction from her except for social studies. In her experience, most students are fluent readers by the end of 3rd grade.

Ms. [REDACTED] utilized the Open Court reading services which incorporated language, writing and word attack. She also used a program that targeted students at their reading level as established using the DRA. The students utilized a basal reader which provided vocabulary, spelling, writing topics and grammar rules. The students were grouped by their DRA levels. Ms. [REDACTED] testified that the student was not part of her reading program because the parents demanded that he receive Wilson Reading in a resource room. She recalled that when the student would return to her room, there were instances when the class would be working on a writing assignment. The student would refuse to initiate work. At the beginning of the year, the student's 1:1 aide would attempt to calm the student down but often the student would be removed because his behavior was distracting to the other students e.g. student was loud, student would drop things, student would move things loudly. At the beginning of the year, she recalled that she could successfully intervene but by October-November 2006 he would not respond to her.

Ms. [REDACTED] recalled that at the beginning of the year, she was communicating about three times per week with the parents. At some point she provided a one-week narrative to Dr. [REDACTED] after she concluded that her direct communications with the parents were not very friendly.

Over the 3rd grade year, the student's behavior changed as the work became harder. Ms. [REDACTED] testified that the student's social skills were not up to par i.e. his interactions with peers, his refusal to respect boundaries. She observed incidents where the student would kick other students, would threaten to stab other students with a pencil. At that point she asked for help from her building principal, [REDACTED]. She also brought these behaviors to the attention of the IEP team on September 13, 2006. She recalled that [REDACTED] the school district social worker, offered a social skills group. The parents allowed this to occur twice but then the mother objected to one of the other participants. [REDACTED] testified that she concluded that the mother did not want any further participation in a social skills group.

Ms. [REDACTED] testified that she attended the IEP meeting on February 9, 2007. She recalled that there was a delay in presenting the functional analysis of the student's behavior and a proposed behavior intervention plan because the parents were providing input/changes to the document. She recalled that at this time, the student was refusing sensory activities from his aide, Ms. [REDACTED] and shouting at the aide. She recalled that she had been told to send the student to the principal's office but at this point, the student was refusing to go. She recalled that it was a big distraction when the student would refuse to go e.g. chair kicking and throwing things on the floor. Ms. [REDACTED] testified that she had a token based behavior plan in her classroom and at the beginning of the year the plan seemed to work for the student. Then the parental demands started – no stickers allowed, no granola bars, no character strips. In her opinion, the student's behavior was pretty tantrum-like – the parents refused to allow the aide to reward good behavior and demanded that only the special education teacher perform this function. Ms. [REDACTED] testified that the student had multiple issues e.g. starting work, completing work, lack of

support system between parents and teacher. She recalled that [REDACTED] believed that the school district needed to start somewhere so they chose work initiation.

Ms. [REDACTED] testified that she attended the IEP meeting on February 15, 2007. She recalled that she viewed the IEP as a good setting for an academic report in lieu of an evening parent-teacher conference. She recalled that her report, with all the comments, lasted 30-45 minutes. A typical parent-teacher conference lasted 15-20 minutes. She testified that when she scheduled her report for the IEP meeting, the parents were upset.

Ms. [REDACTED] testified that she did not believe the parent's statements that the student was unhappy having her as a teacher. In her opinion, the student actually liked her but had been taught a behavior that was defiant. She believed that the statements made by the student to her were clearly in "adult language" and not the way a typical 3rd grade student would speak. The phrasing and terminology were just more adult-like.

Ms. [REDACTED] recalled the tone and tenor of the IEP meeting – tense, very demeaning and hostile. She testified that given the student's parent's dissatisfaction with the aide's abilities, the special education teacher's abilities, and her abilities, the student would not be successful in his current setting.

Ms. [REDACTED] testified that she attended the IEP meeting on February 26, 2007 where the student's placement was changed. She recalled that she had attempted to implement the behavior intervention plan in her classroom and her opinion, it did not address the student's behavior in her classroom.

In her opinion, the student's behavior stopped him from making progress in her 3rd grade classroom and the student's behavior could be attributed to the parent's dissatisfaction with the teaching staff. She recalled instances where she had provided study guides to the resource teacher who modified them for the student. She knew that the student brought the study guides home but believed that there was not enough follow-through in the home setting with the study guides. She recalled instances where the student told her that he had not studied his spelling words at home "because my mom wouldn't let me". She gave credence to these statements because she was aware that the mom was interfering with what she did and when she did it e.g. work on spelling in resource time, don't work on spelling in resource time.

[REDACTED] testified that she is the currently the principal at [REDACTED] and is the former interim director of special education. Currently [REDACTED] has 304 students and 40 staff members. She testified that [REDACTED] has the most diverse student population, the highest mobility rate, the highest limited English population, the highest low income student and the most motivated staff and students. [REDACTED] has two full-time resource teachers and no self-contained classrooms for special education students. Should a student require that placement, the school district maintains a K-3 self-contained classroom in another building.

██████████ participated in the IEP meeting in September 2006. She had previously attended the student's IEP meetings and recalled that the parents criticized the abilities of the staff and the decisions made regarding the education of the student. She recalled that the parents questioned the qualifications of ██████████ and the student's 2nd grade teacher. She recalled that the educational staff felt badgered by the parents. Given the foregoing, she testified that she was concerned about the absence of the school district attorney at this meeting. After the meeting, she expressed her concern that Dr. ██████████ had reversed the decision of the IEP team to not seek an assistive technology evaluation for the student.

██████████ testified that during 3rd grade, there were a number of changes for the student. She recalled that the parents were not supportive of the 1:1 aide, ██████████, the 3rd grade teacher, ██████████, and the special education teachers. She recalled that there was a negative tone to the communications with Ms. ██████████ in the communication log. She testified that there were daily communications from the parents regarding the inadequacy of the professionals working with the student and then the parents would make the same statements to those professionals at IEP meetings.

Ms. ██████████ recalled the student's behavior during 3rd grade e.g. throwing books down stairs, saying disrespectful things to the teacher and his aide, taking things off the desk of a teacher, work refusal, kicking, leaving a classroom without permission. These behaviors would be brought to her attention as building principal and on occasion she would be the crisis manager i.e. working with the student to de-escalate. She testified that on average her crisis manager duties would take one hour out of her day to deal with the student.

Ms. ██████████ described the student's 1:1 aide as a calm and very nurturing individual. She believed that the aide was not as successful in de-escalating the student because the student did not respect his 1:1 aide as an authority figure.

As 3rd grade progressed, she recalled that the student's behavior got worse. She recalled that it was hard to get the student to go to the resource room and if he went to the resource room, he would refuse to engage in any work, throwing pencils. As 3rd grade progressed, the behaviors became more frequent and more intense and the number of times that she was asked to intervene as a crisis manager increased. She also recalled that the parents involved themselves in the school routine by demanding that the student not participate in various activities e.g. pajama party, popcorn party, assemblies, watching movies, character lunches. She testified that if the student knew that he would be excluded from an activity, his behavior that day would deteriorate.

Ms. ██████████ testified that she attended the February 9, 2007 IEP meeting. She testified that the behavior intervention plan was not implemented because of the parent's need for adjustments to the proposal. She recalled that the meeting was emotionally charged, hostile – the parents were unhappy and the staff felt helpless in the face of the student's

behaviors. In the absence of a behavior intervention plan, the staff continued to use her as a crisis manager.

Ms. [REDACTED] was aware that the parents had requested that the student be reassigned. She opposed any reassignment as she had chosen Ms. [REDACTED] and Ms. [REDACTED] because she believed that they would be good match for the student. Ms. [REDACTED] did not believe that a mid-year transfer was appropriate.

Ms. [REDACTED] testified that she attended the February 15, 2007 IEP meeting. She recalled the discussion of a private therapeutic day school and that she was in favor of a change in placement. In her opinion, a smaller school with a smaller environment would be good for the student. Ms. [REDACTED] testified that she believed that if the parents had been satisfied with her staff and would support the staff, the student's troubling behavior would have declined. She was of the opinion that [REDACTED] was no longer an appropriate placement for the student. She knew that [REDACTED] had an excellent reputation of dealing with students who had behavior issues.

As the building principal, Ms. [REDACTED] has a pattern and practice of receiving parent directives. She testified that usually a parent would call and then she would meet with the parent to discuss their concerns or ideas. She testified that rarely do parents demand a specific curriculum. In the instance of the parents of this student, she recalled that the parents would make demands for specific things almost once a week. Some of the demands were consistent, some were inconsistent. She recalled that the parents wanted Ms. [REDACTED] to communicate in a certain way and if she did not, the parents would write insulting comments in the communication notebook. The parents were critical of her teaching practices, her discipline practices, her ability to deliver sensory activities. She recalled that the parents were unhappy with Megan Andrews – they were unhappy with her instructional practices and her work with the student.

[REDACTED] AND THE AUGUST 2007 IEP

Dr. [REDACTED] testified that she believed that the student had progressed at [REDACTED] during the remainder of the Spring 2007 school year. She was unaware of the parent's interference with the routine of the classroom e.g. permission slips, refusals to allow student to attend class functions, etc. There had been a meeting scheduled to review the academic progress at [REDACTED] but the parents were unable to attend. The student was scheduled for Extended School Services. The parents demanded specific goals for the summer although Dr. [REDACTED] testified that she saw no need to develop summer goals and objectives. Nonetheless she developed goals and emailed them to the parents for their input. Dr. [REDACTED] testified that the parents had requested that the student's three year reevaluation be advanced. Dr. [REDACTED] suggested a domain meeting. The parents provided a list of the testing that she demanded the school district administer.

██████████ testified that she is the principal of ██████████ a small private day school in ██████████, Illinois. Ms. ██████████ testified that ██████████ is well-known for its success with students who are experiencing reading difficulties. The usual total enrollment is 100 students and approximately 40 staff (teachers, paraprofessionals, occupational therapists, physical therapists, speech therapists, psychologists) although some of the specialists are not at the school every day. Ms. ██████████ testified that ██████████ is primarily designed for students with a learning disability but they do accept students with emotional disorders. Ms. ██████████ testified that ██████████ utilizes a variety of teaching methodologies to address reading including but not limited to the Wilson Program.

██████████ testified that the school reviewed the student's then existing IEP and did not attempt to assess the student for a month. At that point, the student appeared to have transitioned well into ██████████ classroom. She testified that ██████████ had an extremely strong background in reading and multi-sensory instruction. While the student's IEP required the Wilson Program, the student also received instruction in reading in his classroom, utilizing a reading series that closely paralleled the Wilson Program.

At some point, Ms. ██████████ became aware that the parents were not happy with the behavioral plan utilized by ██████████ in her classroom. The mother insisted that the only behavior plan to be used with the student was the behavior plan developed at ██████████. When ██████████ attempted to comply with the parent's demand, the student's behavior changed dramatically. The student went from compliant to someone who would refuse to do work, crumple up papers, and act disrespectfully toward the staff. As a consequence, ██████████ would not accept the student into its all-day summer school, preferring to work with the student in the more structured morning session. Nonetheless, Ms. ██████████ believed that ██████████ could meet the emotional as well as the behavior needs of the student. Ms. ██████████ testified that the public school behavior plan required more support and reinforcers, which, in her opinion, were provided by ██████████

Ms. ██████████ testified that in April 2007 she began receiving a lot of emails and telephone calls, mostly from the student's mother. She testified that the mother was issuing instructions as to what ██████████ could and could not do with the student. Ms. ██████████ became careful in her emails but when she concluded that her emails were being misconstrued or misinterpreted by the mother, she stopped using emails to communicate with the parents. She recalled that the student would come to school and quote the derogatory statements made by his parents about ██████████. Ms. ██████████ testified that the parent's demands were not reasonable – refusal of field trips, refusal of off-site gym, refusal of trip to Home Depot, demands for prior written notice of field trips. In her opinion, the student looked forward to these activities and parental refusal triggered a downward spiral in behavior.

Ms. [REDACTED] attended the August 10, 2007 IEP meeting. She believed the purpose was to review the student's progress and close out his IEP benchmark to that point. The tone of the meeting was adversarial. For example, she started to report on the student's progress in [REDACTED] class and was immediately interrupted by the mother. Ms. [REDACTED] found that she needed to leave the room to collect herself and then she would return to the IEP meeting. The parents announced that the student would NOT be returning to [REDACTED]. Ms. [REDACTED] disagreed and testified that she believed that the student should remain in a therapeutic day setting where he could receive more immediate and intense services.

Ms. [REDACTED] testified that she had discussed the effect of the student's behavior during the summer session with [REDACTED]. She subsequently reported this information to the assembled IEP team members. She testified that Ms. [REDACTED] believed that the student's disrespect to staff and peers and his refusal to do any work seriously impeded his progress during the summer.

Ms. [REDACTED] testified that the student's IEP should contain goals that would focus on the student's areas of deficit e.g. phonics, spelling, a multi-sensory. She testified that the Wilson Program was not necessary for the student to make progress and that [REDACTED] would then use a variety of methodology when their staff worked with the student. Ms. [REDACTED] testified that after four hours, the meeting ended abruptly with the parents threatening to revoke consent for placement at [REDACTED] and to return the student to a regular education classroom in the school district.

[REDACTED] testified that she was the student's classroom teacher at [REDACTED] in Spring 2007. Ms. [REDACTED] has been employed at [REDACTED] for ten years and is responsible for the behavior and Individual Education Plans of students placed in her classroom. Ms. [REDACTED] has a teaching certificate for elementary and secondary education and an endorsement for students with learning disabilities and social/emotional disorders. She has a master degree in special education focused on teaching children with behavior disorders.

There were 7 or 8 students in her classroom including this student. Ms. [REDACTED] testified that she had three aides in her classroom (including the student's 1:1 aide, Miss [REDACTED]). She testified regarding her daily curriculum. She recalled that the occupational therapist consulted with her regarding a specific computer program for the student. She believed that the student saw the speech pathologist on a pull-out basis.

Ms. [REDACTED] testified that she utilized out of school activities and field trips as an extension of student learning. For example recalled that [REDACTED] had a play which was performed off-site. The student chose to work on set design. The student was involved in purchasing items for the set and building the back drops. She recalled that when the students went to remove the back drops to the off-site location for the play, the student's mother refused permission for the student to participate in that activity. As a

consequence, the student was very upset that day, refused to do any work and stayed back in the classroom with his aide. She recalled that the student attended the play and seemed upset that neither of his parents attended.

██████████ testified that the student participated in gym classes off-site for awhile and then the parents refused permission for these off-site activities, demanding to know when they were going, why they were going, how the student could be contacted, the addresses and telephone for the places where they were going, etc. Ms. ██████████ testified that she provided the parents with a list of her classroom schedule and requested their permission for field trips on a form marked "Field Trip Permission Slip. By the end of the school year, the mother revoked her consent and insisted that she be called if the student was leaving ██████████. This requirement that the mother be called resulted in the student not participating in the event when the mother could not be reached via telephone. Once the whole class had to stay back because the student's mother could not be reached. Ms. ██████████ testified that when the student was not permitted to go on field trips, he was distraught, would refuse to do any work, would rip things up, refuse to participate, and refuse to follow any adult direction.

Ms. ██████████ testified that in addition to the Wilson Reading, she utilized other multi-sensory methodologies in her classroom e.g. Explode the Code, Visual Reader, Earobics. She recalled that the student responded well to Touch Math.

She recalled that when the student first arrived, he was coming along in his academic progress and seemed to enjoy receiving more attention to his needs, frequent sensory breaks. The student did an excellent job in social studies and science. From March 1, 2007 through April 20, 2007, Ms. ██████████ testified that the student was progressing in Wilson, Earobics and at least 80% compliant in terms of his behavior. Ms. ██████████ testified that her classroom behavior program involved the use of stickers which she found to be a good reinforcer for the student. But then the mother of the student demanded that she stop using stickers. Ms. ██████████ testified that she discussed the stickers with the student and discussed her use of a treasure box with the student and the student indicated that he found the stickers and treasure box reinforcing. Ms. ██████████ testified that she would be honoring the student's wishes and would be using the stickers and treasure box. By May 2, 2007 the parents were demanding that she stop the sticker reinforcers and stop charting the student's behavior every 15 minutes. Ms. ██████████ testified that she subsequently learned that the mother was throwing the student's rewards from the treasure box in the trash.

By May 6, 2007 Ms. ██████████ had acquiesced to the mother's demands that she just use the behavior intervention developed at the public school (to the exclusion to her classroom program with the stickers and treasure box). She charted the student's behavior and his compliance fell significantly. She no longer monitored the student's behavior every 15 minutes, checking for an opportunity to reward appropriate behavior. At the parent's demand, the opportunities for reward was every 45 minutes. She recalled

that when the student's family became upset about something that she was doing, the student's behavior would deteriorate – the student would throw things around the room, would be really loud, would screaming, would shutting down, would say inappropriate things. The behavior became pronounced and more marked. Ms. [REDACTED] testified that the student was coming to school telling her what she could or could not say to him.

Ms. [REDACTED] testified that she was receiving daily emails from the mother of the student. She asked her assistant principal, [REDACTED] to respond. Ms. [REDACTED] testified that the mom was angered that she no longer received daily responses to her emails.

Ms. [REDACTED] testified that she worked at [REDACTED] during the summer, tutoring students in the [REDACTED]. She recalled that when the student was compliant she would work with the student on a pull-out basis. She testified that the student was not compliant very often and little progress was made during the 2007 summer session.

Ms. [REDACTED] testified that the student made moderate to low progress in the Wilson Reading program because his behavior impeded his progress.

Ms. [REDACTED] attended the August 10, 2007 IEP meeting, arriving late after completion of her tutoring responsibilities in the [REDACTED]. She testified that she shared her assessment of the student's progress, most of which she had already shared with the parents in the Spring. She testified that she attempted to share the student's progress on his goals but the family objected – the family would not accept any of the goals because the family did not want the student to stay at [REDACTED]. She also testified that the parents objected to any discussion of the student's behavior in the absence of a psychologist. Nonetheless, Ms. [REDACTED] reported upon the student's behavior in her classroom.

Ms. [REDACTED] testified that she disagreed with the parent's objections to [REDACTED] and believed that the student needed the therapeutic day setting. She testified that she had seen the student's progress during the first month and a half and believed that he could replicate that progress if he remained at [REDACTED]. She testified that she believed that the student was trapped between two environments and did not know what to do e.g. the student started guitar lessons at [REDACTED] and was permitted to take his guitar home – then the parents said he could not – then the parents said he could bring the instrument home.

Ms. [REDACTED] testified that the behavior intervention plan developed at the public school focused on work initiation. She testified that the plan was developed in a different environment than the environment that the student was in at [REDACTED]. She believed that the plan was a draft and that the school district was looking for a smaller milieu for the student where he could be successful. She believed that she incorporated the same ideas of the draft plan into her classroom. It was her understanding that everyone was on board with this plan on February 27, 2007

Both [REDACTED], 4th grade teacher at [REDACTED] and [REDACTED] attended the meeting on August 10, 2007. They recalled the parents abruptly leaving the IEP meeting. They recalled the parents threatening to revoke their consent for the student's special education. Both testified that they were alarmed that the student might return to [REDACTED] without the special education support that he so clearly required.

[REDACTED] testified she has been employed by [REDACTED] for 25 years and currently acts as the assistant principal. She is certified as both a special education and regular education teacher. She has been trained in various multisensory techniques. Ms. [REDACTED] had little involvement with the student in Spring 2007. She recalled that she and [REDACTED] spoke to the student's parents about the summer program. She recalled that she and Ms. [REDACTED] believed that the student should attend during the morning session but not attend the afternoon session. She testified that the rationale was that the student would not do well in the more unstructured camp-like afternoon session. She recalled that they made that recommendation for this student and one other student. She testified that the [REDACTED] would be the student's classroom teacher and that when she took her maternity leave, another teacher would be the student's classroom teacher for the remainder of the session. [REDACTED] would be at [REDACTED] that summer but she would be in the [REDACTED]. She recalled that there would be no change with the student's aide, Miss [REDACTED] i.e. she would continue from the Spring 2007 session.

Ms. [REDACTED] testified that she heard daily about the student's behavior and its effect on his summer school progress. She testified that she had seen the student in the hallway outside his classroom. She testified that on those occasions the aide or the classroom teacher would be attempting to address the student's behavior. She testified that the student would often be brought to her when neither the aide or the classroom teacher were successful. On those occasions, she was sometimes able to address the student's behavior. She testified that she was not always available for these episodes and when she was not, the student would shut down or be verbally abusive e.g. shut up, go away. She testified that the amount of time spent with that student addressing his behavior was not the normal.

Ms. [REDACTED] testified that she was aware of the behavior program implemented in the classroom by [REDACTED] and the success of that program. She testified that she was aware that when the parents insisted that the sensory rewards not be provided until 45 minutes had elapsed, the student's behavior deteriorated.

Ms. [REDACTED] prepared a report regarding the student's progress that summer. She reported that the student attended 21 out of 29 days. She reported that the student completed work in the Wilson Reading Program on 6 out of 29 days. She reported that academic tasks and sensory breaks were met with refusal, disrespect to staff and property destruction. As

a consequence, the summer staff conferred with the student and developed a "contract" in which tokens could be earned for work completion and utilization of sensory activities. On July 12, 2007 the parents reported that the student was unhappy and demanded an IEP meeting. On July 29, 2007 the parents insisted that the contract be stopped.

Ms. [REDACTED] recalled that [REDACTED] continued to receive daily emails from the mother of the student that summer. The emails were directed to the classroom teacher who referred them to her. She testified that the mother of the student did not like this delegation. She recalled that the emails were accusatory in nature and often the mother of the student would misinterpret her responses. At that point, Ms. [REDACTED] started to respond with a "yes" or "no" if she could.

By the end of the summer, Ms. [REDACTED] was concerned about the impact of the student's behavior on his education. She recalled that when the student worked with [REDACTED] in March 2007 and April 2007, the behavior seemed to be manageable. The behavior started to change as the mother of the student started to demand changes and started to insist on a behavior plan created for a public school environment. In her opinion, the student's behavior was an attempt by the student to gain control over his life but, in fact, the behavior was sabotaging his success in the classroom. She testified that the student would repeat his mother's comments about [REDACTED] and seemed to believe that [REDACTED] needed to know those things.

Dr. [REDACTED] testified that at the beginning of July 2007 the mother started calling her, reporting that the student was unhappy. Dr. [REDACTED] visited [REDACTED] and observed work refusal and refusal of sensory activities. The student complained to her that he was not receiving credit for his work. In response to these concerns, Dr. [REDACTED] testified that she and [REDACTED] developed a contract for the student. Dr. [REDACTED] testified that the contract supported the public school behavior intervention plan. The contract addressed task completion. Two weeks later, the mother of the student demanded that [REDACTED] stop using the contract. By July 25, 2007 the mother was demanding a return to [REDACTED] and demanding a specific 4th grade teacher. Dr. [REDACTED] testified that the mother's complaints about the [REDACTED] staff were similar to those she had expressed about the [REDACTED] staff – the teacher is not qualified, the learning environment is not appropriate, the school is not instructing the student properly, etc. The mother demanded an IEP meeting but Dr. [REDACTED] advised her that she could not gather all of the providers for the student at that time. The mother continued to demand an IEP meeting. Dr. [REDACTED] testified that she advised the mother which staff members were available and which staff members were not available. Dr. [REDACTED] testified that the mother agreed to an IEP meeting with full knowledge that certain individuals were not available.

The IEP meeting on August 10, 2007 lasted four hours, resulting in an incomplete IEP e.g. the goals and objectives were incomplete and many of the related service providers were not present but consensus was reached regarding the student's placement – [REDACTED] or some other therapeutic day placement and some behavior goals were

created. The parents refused to discuss the student's behavior and became outraged when the IEP participants discussed the student's behavior and its impact on his education. The meeting ended abruptly when the parents threatened to return the student to his local school. On August 12, 2007 the school district filed its request for due process. Subsequent thereto, the parents attempted to enroll the student at [REDACTED]. When this hearing officer confirmed that the stay-put placement was a therapeutic day placement, the parents enrolled the student at [REDACTED]. [REDACTED] provides no special education or related services to its students.

APPLICABLE LAW

The law applicable to the facts in this case is set forth in the Individuals with Disabilities Education Act (IDEA), 20 USC §1401 et seq., the federal regulations to IDEA, 34 CFR Part 300, the School Code of Illinois, 105 ILCS §5/14-8.02 et seq., and the applicable state regulations, 23 Ill.Admin.Code Part 226. The local school district bears the burden of proof that at all times relevant it properly identified the nature and severity of the student's suspected disabilities and if appropriate, that it offered the student a free appropriate public education in the least restrictive environment, consistent with procedural safeguards.

In an administrative hearing, the party seeking the relief bears the burden of proof. Schaffer v. Weast, 126 S.Ct. 528 (2005). In the instant case, the school district bears the statutory burden that at all times relevant it properly identified the nature and severity of the student's suspected disabilities. In the context of its filing of a request for due process, the school district bears the burden of proof that it offered the student a free appropriate public education in the least restrictive environment, consistent with procedural safeguards, on August 10, 2007. In the context of their filing, the parents bear the burden of proof that (a) the school district [REDACTED] implementation of the student's IEP during 3rd grade denied the student a free appropriate public education; (b) that the placement selected on August 10, 2007 was too restrictive and did not meet the needs of the student; and (c) that they are entitled to reimbursement for their unilateral placement of this student at [REDACTED] for the 2007-2008 academic year.

In Board of Education, Hendrick Hudson Central School District. v. Rowley, 458 US 176 (1982) ("Rowley"), the Supreme Court set forth a two pronged test for evaluating whether or not the school district has complied with applicable special education laws - there must be compliance with statutory procedures and then the individualized education program (IEP) developed through such procedures must be reasonably calculated to enable the student to receive educational benefit.

APPLICATION OF LAW TO THE FACTS

In order to attempt to comprehend the rancor and discord between the parties, the hearing officer reviewed the historical data and testimony of the parties who participated in the IEP created in May 2006. A review of the documents alone suggests a continuing campaign by the parents of this student to micromanage the education of this student. The documents and testimony are replete with demands to meet, demands to evaluate, followed by disclosure of independent evaluations by the parents. The school district appeared intent on educating this young man. The parents seemed intent on foisting multiple diagnoses of their son on the school district, coupled with demands for a particular reading methodology. As the complexity of the material escalated each year, the parent's disparaging remarks to the educators seemed to escalate. As the parent's dissatisfaction peaked each Spring, the student's behavior would peak coupled with statements like "my mom doesn't like you", "you're not doing it right", "my mom is going to have you fired". It does not appear from the testimony that the parent's interventions were helpful in furthering the student's learning. In fact, it appears that it hindered his development.

At the hearing, almost to a person, the educators testified not only to dismissive demeaning remarks at the 3rd grade IEP meetings but similar, dismissive, demeaning remarks during 2nd grade. Throughout the course of the hearing and during their testimonies, the mother and father of this student gave ample evidence of their distrust, disdain and hostility toward the school district and [REDACTED]. As the trier of fact, this hearing officer witnessed the parent's cross-examination of school district and [REDACTED] personnel and observed the intensity of the questions and the dismissive reaction to the answers to their questions. The parent's behavior during this hearing is entirely consistent with the behavior apparently displayed in their contacts with school district and [REDACTED] personnel.

It appears clear that at some point the school district concluded that nothing would satisfy these parents. Once a demand was satisfied, new demands would follow. It appears that for a variety of reasons, the move to [REDACTED] in February 2007 could have been a new beginning for the student. [REDACTED] is a small structured private day school for special education students with learning disabilities. [REDACTED] bears the distinction of being the school of choice for many parents and often parents have filed requests for due process demanding that their children's placement be changed to [REDACTED]. In this case, the parents apparently believed that [REDACTED] (or for that matter any placement other than the student's then current 3rd grade classroom with [REDACTED]) was attractive because it offered 60 minutes/day of Wilson Reading. At first, from the testimony of [REDACTED] personnel it appeared that the student progressed very well until the parents intervened by making changes. In fact it appears that when the parents intervene, it results in diminished progress by the student.

The results were predictable – the student’s behavior deteriorated and this time the school district asserted that the student’s behavior required that he remain at [REDACTED] [REDACTED] staff testified that the student required the small nurturing environment of a therapeutic day school and that if the parents would cease and desist from their attempts to micro-manage their son’s education, they could meet the student’s needs.

The parents insisted on an IEP meeting in August 2007 despite their knowledge that many of the usual participants were not available. The parents knew that a psychologist would not be present at this IEP meeting, but then attempted to use the psychologist’s absence as a reason to attempt to stifle all discussions of the student’s behavior. The parents are apparently of the opinion that no discussion of behavior can take place unless a psychologist is present. There is no statutory basis for this belief. [REDACTED] [REDACTED] and [REDACTED] all testified that the student’s deteriorating behavior at the end of the 2006-2007 school year and during the Summer 2007 session seriously compromised his rate of progress. Apparently outraged that they could not stifle the discussion, the parents abruptly left the meeting.

It is patently obvious from the testimony and documents that the parent’s relationship with the school district has been poisoned. It is patently obvious that the parent’s actions affected the success or failure of the student’s placement and his behavior within that setting. When the parents limit their interventions, the student’s behavior can be managed and the education of the student can proceed. In February 2007, because of the parent’s constant intervention, it became clear that the student would not be able to satisfactorily obtain any educational benefits from his continued placement in the 3rd grade classroom of [REDACTED]. Thus the IEP team considered its alternatives and chose a separate private day school option where the IEP team believed the student could receive educational benefit. In August 2007, again because of the parent’s constant intervention, it became clear that the student would not be able to satisfactorily obtain any required educational benefits from his continued placement at [REDACTED]. Given the parent’s penchant for micromanagement, it is difficult to determine what the student’s placement should be.

In Board of Educ. v. Illinois State Board of Educ., 938 F.2nd 712 (7th Cir.1991) the 7th Circuit Court of Appeals held that the educational placement of the student must serve the educational interests of the child. The court concluded that the parent’s hostility could be taken into account when considering whether the placement was reasonably calculated to supply educational benefit to the student. Clearly the school district was on solid ground when it acquiesced to the parent’s demand that the student be removed to [REDACTED]. The parent’s hostility to the school district was so palpable that it was difficult to ignore during the hearing.

Had the question merely involved the student’s continued placement at [REDACTED] [REDACTED] the course seems clear – parental hostility has doomed that placement.

However the testimony of both the school district witnesses and even many of the parent's witnesses support the conclusion that the most appropriate placement for this student as of August 10, 2007 is a private therapeutic day school. But what to do with parental hostility to a new placement? What to do with parents who abruptly leave an IEP meeting, threatening to return the student to a regular education classroom? What to do with an incomplete IEP?

In Kevin T. v. Elmhurst Community School District 205 (N.D.II 2002) the court restated the basic tenets of Rowley, supra:

IDEA seeks to assure that all children with disabilities have available to them...a free appropriate public education ("FAPE"). To assure that disabled children receive a FAPE, the IDEA requires that school districts cooperate with the parents in creating an "individualized education program ("IEP") which sets forth the child's educational goals. To determine whether the school district has provided a FAPE, courts must determine whether the school: (1) complied with the IDEA's procedural requirements; and (2) developed an IEP that is "reasonably calculated to enable the child to receive educational benefits...

However, while the procedural requirements of IDEA have great importance, Congress implemented them to achieve "full participation of concerned parties throughout the development of the IEP. Therefore, where the parents fully participate in the plan to develop the IEP, the first prong of *Rowley* is usually met.

Here, these parents have taken the requirement for compliance with procedural requirements and full participation and turned them on their head. These parents participated in a four hour IEP meeting in August 2007 and when it became clear that they could not control the discussion nor could they veto the continued placement of the student at [REDACTED] they abruptly left the meeting, threatening to withdraw their consent for special education. It is clearly obvious to this hearing officer that any further attempts to communicate with these parents was doomed unless the school district acquiesced in their demands to return the student to a regular 4th grade classroom in the school district. The school district attempted to meet both the substantive and procedural requirements of *Rowley*. The parent's hostility to the school district frustrated these attempts, leaving the school district with an incomplete IEP and a placement determination based upon the student's behavior. To allow the parents to now complain that the August 2007 IEP was incomplete is not appropriate. I FIND that the school district offered the student with a FAPE (to the extent allowed in a 4 hour meeting) in the least restrictive environment and as a consequence the request for unilateral placement must fail. Should the parents ever return the student from his unilateral placement, the remainder of the components of the IEP can be completed.

The parents complain that the school district and [REDACTED] implemented the IEP's for 3rd grade in such a manner as to deny the student a free appropriate public education. The parents do not complain that they were denied any of the procedural requirements in the creation of the IEP's in May, 2006, September 2006 and February 2007. The record is filled with testimony suggesting WHEN the parents were in agreement, the student's behavior could be controlled and his education could progress. The record is filled with testimony that the student did in fact make some educational progress. Rowley and its progeny require no more.

The record also supports a conclusion that the student's needs for support, both educationally and behaviorally, have outgrown the school district. The student's needs for immediate assistance can only be met in the calm nurturing environment of a therapeutic day school.

The parents assert that the student's educational progress should be assessed by his progress or lack thereof in the Wilson Reading methodology. The record is replete with documents asserting that the student was making educational progress in his 1st and 2nd grade curriculum in the absence of Wilson Reading instruction in the school setting. In fact [REDACTED] testified that in May 2006 the student would be ready for the regular education reading program when he completed the Foundations series. The parents' focus on Wilson Reading is misplaced – the record supports a conclusion that the student required a multisensory reading program. The record also support the conclusion that the existing reading program in the school district and at [REDACTED] was such a multisensory reading program.

The parents assert that the school district “acknowledged” the student's needs for Wilson Reading when it reimbursed the parents for outside tutoring. In hindsight, it appears to this hearing officer that the school district was attempting yet again to acquiesce in a parental demand in hopes of mitigating any discord with the parents. Given the evidence heard by this hearing officer, I would not have ordered reimbursement.

The parents assert that they were not hostile to the school district, just “disappointed”. The parents assert that they “proactively” supported the student's education. The record supports a different conclusion: demands for testing by the school and then an after-the-fact disclosure that the parents had obtained the same testing from an outside source. There was a sense of “gotcha” in this discourse that belies any assertion of mere “disappointment”.

The parents offered the testimony of the student's current 4th grade teacher at [REDACTED] in support of their argument that the student can function in a regular education 4th grade classroom. However, the student is currently enrolled in a school where he has been placed in a classroom with less than 10 students, a small nurturing environment with a nurturing teacher. It must be noted that

the teacher testified that the parents support the enrollment. To the surprise of no one, [REDACTED] testified that she has no behavior concerns.

The parents offered the testimony of [REDACTED] who introduced herself as a "pediatric neurobehavioral case manager". She testified that she had accompanied the parents to various IEP meetings. Ms. [REDACTED] volunteered opinions regarding curriculum, testing and the student's behavioral status. Ms. [REDACTED] is neither a special education or regular education teacher. She had conducted no observations of the student. The weight of her testimony was severely compromised by her lack of training and expertise.

DECISION

IT IS ORDERED that the special education program and related services set forth in the student's Individual Education Plans dated May 17, 2006 and September 13, 2006 were implemented in such a way by the school district so as to provide the student with a free appropriate public education.

IT IS FURTHER ORDERED that the special education program and related services set forth in the student's Individual Education Plans in February 2007 were implemented in such a way by the school district and [REDACTED] so as to provide the student with a free appropriate public education.

IT IS FURTHER ORDERED that the Individual Education Plan dated August 10, 2007 to the extent possible, given the early and abrupt exit of the parents represented an offer of a free appropriate public education and thus any claim for reimbursement for a unilateral placement shall be denied pursuant to 34 CFR §300.148..

IT IS FURTHER ORDERED that if and when the parents present the student for re-enrollment in the school district, the student's stay-put placement shall be a private therapeutic day placement. If and when the parents present the student for re-enrollment in the school district, the student shall be placed in a private day placement selected by the school district and an IEP developed at the private day placement for the student.

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.

ISSUED this 14th day of April 2008.



CAROLYN ANN SMARON
Impartial Due Process Hearing Officer